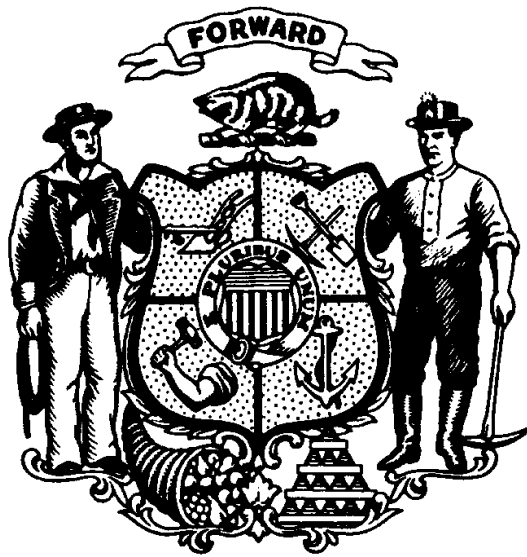


WISCONSIN ADMINISTRATIVE REGISTER

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EMERGENCY RULES NOW IN EFFECT

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

EMERGENCY RULES NOW IN EFFECT (4)

Agriculture, Trade & Consumer Protection

1. Rules adopted amending ss. **ATCP 81.50 (2), 81.51 (2), and 81.52 (2)**, relating to grade standards for colby and monterey (jack) cheese.

Finding of Emergency

The state of Wisconsin department of agriculture, trade and consumer protection (DATCP) finds that an emergency exists and that an emergency rule is necessary for economic reasons to protect the public welfare of the citizens of Wisconsin. The facts constituting the emergency are as follows:

(1) DATCP has adopted standards for grades of cheese manufactured and sold in Wisconsin under s. 97.177, Stats., and ch. ATCP 81, Wis. Adm. Code. Any cheese which carries a state grade mark must conform to the standards and characteristics of the labeled grade.

(2) Under current rules, colby and monterey (jack) cheese must contain numerous mechanical openings in order to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

(3) Changes in cheese manufacturing technology, packaging and equipment have made it extremely difficult for many processors and packagers to achieve the numerous mechanical openings or open body character required by these top two grade categories. A majority of today's wholesale buyers and packagers prefer a closed body cheese for a variety of reasons, including ease of shredding and the ability to package "exact-weight" pieces with minimal variation and waste.

(4) Currently, a closed body cheese may be labeled or sold as Wisconsin grade B or "not graded." It cannot be labeled or sold as

Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand), nor can it command the premium price associated with these top two grade categories.

(5) Wisconsin is the only state with its own grade standards for colby and monterey (jack) cheese. The United States Department of Agriculture modified its grade standards for colby and monterey jack cheese in 1995 and 1996, respectively, in response to industry requests to allow an open or closed body. Buyers who cannot obtain the desired graded product in Wisconsin will likely switch to suppliers from other states. Once customers are lost they are difficult to regain.

(6) Wisconsin's dairy industry plays a major role in our state's economy. Approximately \$3 billion or 90% of Wisconsin's milk production goes into the manufacture of cheese. Lost business revenues harm the dairy industry, cause increased unemployment, and have a negative impact on the state's economy.

(7) Pending the adoption of rules according to the normal administrative rulemaking procedures, it is necessary to adopt emergency rules under s. 227.24, Stats. to protect the public welfare based on an economic emergency for the state's dairy industry and the subsequent impact on the general economy and citizens of this state.

Publication Date: August 8, 1998
Effective Date: August 8, 1998
Expiration Date: January 4, 1999
Hearing Date: September 14, 1998
Extension Through: May 3, 1999

2. Rules were adopted creating ss. **ATCP 10.68 and 11.58**, relating to fish farms and imports of live fish.

Finding of Emergency

(1) This emergency rule implements s. 95.60, Stats., which was created by 1997 Wis. Act 27.

(2) Under s. 95.60, Stats., a person who operates a fish farm must register annually with the Wisconsin department of agriculture, trade and consumer protection (DATCP). A person who imports live fish or fish eggs into Wisconsin must meet fish health requirements and obtain an import permit from DATCP. DATCP must establish registration and import permit standards by rule.

(3) On December 9, 1998, the Board of Agriculture, Trade and Consumer Protection (DATCP Board) approved final draft "permanent" rules to implement s. 95.60, Stats. Among other things, the rules establish fish farm registration standards and fish import standards. Before DATCP may adopt these final draft "permanent" rules, it must submit them for legislative committee review under s. 227.19, Stats. DATCP must then adopt and file the rules under s. 227.20, Stats., and publish them under s. 227.21, Stats. As a result, the final draft "permanent" rules will not take effect for several months.

(4) Current fish farm registration certificates will expire on December 31, 1998, before the final draft "permanent" rules take effect. The department must adopt a temporary emergency rule so it can process registration renewals pending the effective date of the final draft "permanent" rules. This emergency rule adopts, on a temporary basis, registration provisions contained in the department's proposed final draft "permanent" rules.

(5) This emergency rule also adopts, on a temporary basis, rules to prevent imports of diseased live fish and fish eggs that threaten the health of fish in Wisconsin fish farms and the Wisconsin natural environment. These temporary import requirements are based on requirements previously administered by the Wisconsin department of natural resources (DNR). The final draft "permanent" rules, when adopted, will expand upon these interim requirements.

(6) This emergency rule is needed to protect the public peace, health safety and welfare. Without this rule, DATCP would not be able to process fish farm registrations for 1999, or issue permits for live fish imports. Without the protections afforded by this emergency rule, Wisconsin fish farms and wild fisheries would also be exposed to an unnecessary risk of disease.

Publication Date: December 28, 1998

Effective Date: December 28, 1998

Expiration Date: May 27, 1999

Hearing Date: February 3, 1999

3. Rules were adopted amending s. ATCP 60.19 (3) and (4), relating to drug residues in raw milk.

Finding of Emergency

The state of Wisconsin department of agriculture, trade and consumer protection (DATCP) finds that an emergency exists and that the following emergency rule is necessary to protect public health, safety and welfare. The facts constituting the emergency are as follows:

(1) Milk from Wisconsin dairy farms may not contain drug residues. Current rules under ch. ATCP 60, Wis. Adm. Code, require every dairy plant operator to perform a drug residue screening test on every bulk load of raw milk received by that operator. If the bulk load tests positive for any drug residue, the operator must test a milk sample from each producer milk shipment included in that bulk load. Current rules do not require a dairy plant operator to perform a confirmatory test if a producer sample tests positive on an initial test.

(2) If a producer sample tests positive for drug residue, the dairy plant operator may hold that producer financially responsible for contaminating the bulk load. In some cases, the cost of a contaminated tanker load of milk may be \$5,000 or more. The department may also take enforcement action against the milk producer. Enforcement may result in financial penalties or suspension of the milk producer's license.

(3) In several enforcement actions, producers have argued that dairy plant drug residue tests were inaccurate. Producers claimed that there was no confirmatory testing, and no opportunity to confirm the accuracy of the dairy plant operator's test findings. Inaccurate findings may unfairly penalize affected producers, and result in severe financial losses to those producers. The lack of a confirmatory test aggravates conflicts between dairy plant operators and milk producers.

(4) Confirmatory testing of test-positive producer samples would provide greater assurance of fairness for milk producers, and would help avoid conflicts between dairy plant operators and producers. Dairy plant operators can perform confirmatory tests at reasonable cost. An emergency rule requiring confirmatory testing of producer samples is necessary to protect milk producers, and to promote the efficient operation and economic well-being of Wisconsin's dairy industry.

(5) Confirmatory testing of test-positive producer samples will enhance, and not reduce, the safety of Wisconsin milk supplies. Dairy plant operators will still be required to test bulk tanker loads of milk, and dispose of tanker loads that test positive for drug residues.

(6) This emergency rule will strengthen public health protection by requiring dairy plant operators to dispose of contaminated loads, or denature contaminated loads before transferring them to the custody of another person. Denaturing ensures that persons

receiving custody of contaminated loads will not redirect them to human food use.

(7) Pending the adoption of rules according to normal administrative rulemaking procedures, it is necessary to adopt this emergency rule to do both of the following:

(a) Protect the public milk supply against drug residue contamination by assuring proper disposal of contaminated milk.

(b) Provide additional assurance that milk producers will not be subjected to serious penalties or financial losses based on inaccurate drug residue tests.

Publication Date: April 30, 1999

Effective Date: April 30, 1999

Expiration Date: September 27, 1999

4. Rules adopted revising s. ATCP 10.45, relating to security of dairy plant payments to milk producers.

Finding of Emergency

(1) Section 100.06, Stats., is designed to provide "reasonable assurance" that dairy farmers will be paid for the milk they produce. Under ss. 97.20(2)(d)2. and 100.06, Stats., a dairy plant must, as a condition to licensing, comply with applicable security requirements under s. 100.06, Stats., and department rules under ch. ATCP 100, Wis. Adm. Code. Since dairy plant licenses expire on April 30 annually, dairy plants must comply with applicable security requirements in order to qualify for license renewal on May 1 of each year.

(2) Under s. 100.06, Stats., and ch. ATCP 100, a dairy plant operator who purchases milk from producers must do one of the following:

(a) File with the department of agriculture, trade and consumer protection ("department") audited financial statements which show that the operator meets minimum financial standards established by s. 100.06, Stats.

(b) File security with the department in an amount equal to at least 75% of the operator's "maximum liability to producers," as calculated under s. ATCP 100.45(5).

(c) Enter into a dairy plant trusteeship under ch. ATCP 100, Subch. V.

(3) Under s. ATCP 100.45(5), a dairy plant operator's "maximum liability to producers" is based on the plant operator's largest monthly purchase of milk during the *preceding* license year. Milk prices hit all time record highs in 1998, dramatically increasing monthly dairy plant payrolls. Security requirements for the 1999 license year are currently based on these inflated 1998 monthly payrolls, even though 1999 monthly payrolls have dropped dramatically in response to price changes.

(4) Since December 1998, the average market price for raw milk has fallen by approximately 40%. Dairy economists expect BFP average prices to remain at least 12% to 16.2% below last year's average during 1999. Because of the dramatic decline in milk prices, dairy plants have smaller producer payroll obligations than they had in 1998.

(5) Prices received by Wisconsin dairy plants for processed dairy products have also fallen dramatically since December. This has created serious financial hardships for some dairy plants.

(6) Current security requirements, based on 1998 producer prices and payrolls, are excessive in relation to current payroll obligations and impose an added financial burden on dairy plants. Current security requirements under s. ATCP 100.45(5), based on last year's prices, are at least 31 to 48% higher than they would be if calculated at current prices.

(7) Because of the dramatic decline in dairy prices, some dairy plant operators are required to file large amounts of additional security, often amounting to millions of dollars. This is a major expense for affected operators. Operators may find it difficult, financially, to obtain and file the required security. If a dairy plant is unable to file the required security in connection with the May 1, 1999 license renewal, the department will be forced to take action

against the dairy plant's license. This could result in the forced closing of some unsecured dairy plants. The forced closing of an unsecured plant may, in turn, result in serious financial losses to producer patrons.

(8) By requiring excessive security based on last year's prices, current rules are making it unnecessarily difficult and expensive for dairy plants to obtain and file security. This could contribute to the financial failure of some dairy plants, or to the forced closing of some unsecured plants. Dairy plant financial failures or closings, if they occur, may cause serious and widespread financial injury to milk producers in this state. This constitutes a serious and imminent threat to the public welfare.

(9) In order to reduce the risk of dairy plant financial failures or forced closings, rule amendments are urgently needed to adjust dairy plant security requirements to appropriate levels based on current milk prices. The rule amendments will relieve financially stressed dairy plants from unnecessary financial burdens and will make it easier for those dairy plants to file security with the department. That, in turn, will reduce the risk of dairy plant financial failures, or the forced closing of unsecured plants, which may adversely affect milk producers.

(10) Rule amendments, to be effective, must be promulgated prior to the dairy plant license year beginning May 1, 1999. That is not possible under normal rulemaking procedures. Therefore, the following emergency rule is needed to protect the public welfare.

(11) Should milk prices rise beyond the levels currently anticipated for the license year beginning May 1, 1999, so that security filed under this emergency rule is less than 75% of a dairy plant operator's current monthly producer payroll, the operator is required to notify the department of that fact under s. 100.06, Stats., and s. ATCP 100.20(3). The department may demand additional security at that time.

Publication Date: April 20, 1999
Effective Date: April 20, 1999
Expiration Date: September 17, 1999

EMERGENCY RULES NOW IN EFFECT

Commerce

(Flammable & Combustible Liquids, Ch. Comm10)

Rules adopted revising **ch. Comm 10**, relating to regulation of flammable and combustible liquids.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety, welfare and the environment.

The facts constituting the emergency are as follows. Under ss. 101.09, 101.142 and 101.144, Stats., the Department protects public health, safety, welfare and the environment by promulgating rules for and administering the regulation of petroleum product storage tank systems and the storage and handling of flammable and combustible liquids. The purpose of the regulatory effort is to guarantee that storage tank systems and their contents are managed in a manner that is protective of life safety and the environment.

On December 22, 1998, a ten-year upgrade deadline comes to an end, and all tank systems falling under the United States Environmental Protection Agency's rules are required to have been

upgraded to comply with new and environmentally protective construction standards. After the final compliance date, the Department and its contracted agents will conduct inspections to guarantee that tank systems which are not in compliance have been shut down in accordance with state and federal rules. In those instances where owners or operators have not complied with the upgrade or shutdown requirements, immediate action must be taken to either prevent the tank systems from continuing to be used or prevent the delivery of additional petroleum product to the systems.

The shut down of noncomplying tank systems is a core environmental and financial issue. The tank systems that are not in compliance pose a continuing high-risk threat to the environment, and delay in action will continue an unnecessary environmental hazard. Additionally, new releases from these non-upgraded tank systems will add to the financial burden of the PECFA program, which is significantly over-subscribed. The rule included with this order is in response to environmental issues associated with non-upgraded tank systems.

Publication Date: December 11, 1998
Effective Date: December 11, 1998
Expiration Date: May 10, 1999
Hearing Date: March 3, 1999
Extension Through: July 8, 1999

EMERGENCY RULES NOW IN EFFECT

Commerce & Natural Resources

(Petroleum Environmental Cleanup Fund Interagency Responsibilities, Ch. Comm 46)

Rules adopted revising ch. Comm 46, relating to the Petroleum Environmental Cleanup Fund Interagency Responsibilities.

Finding of Emergency

The Departments of Commerce and Natural Resources find that an emergency exists and that adoption of a rule included in this order is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under sections 101.143 and 101.144, Wisconsin Statutes, the Department of Commerce protects public health, safety, and welfare by promulgating rules for and administering the Petroleum Environmental Cleanup Fund (PECFA Fund). The purpose of the fund is to reimburse property owners for eligible costs incurred because of a petroleum product discharge from a storage system or home oil tank system. In administering this fund, the Department has relied upon a Memorandum of Understanding with the Department of Natural Resources for classifying contaminated sites, disbursing funds, and addressing other statements of policy that affect the two Departments.

On September 17, 1998, the Joint Committee for Review of Administrative Rules adopted a motion pursuant to s. 227.26(2)(b), Stats., that directed the Department and the Department of Natural Resources to jointly adopt the above portions of the Memorandum of Understanding and related policy issues as an Emergency Rule. An emergency rule in response to that directive was adopted by the Department and became effective on January 1, 1999. Since that date, further improvements for jointly administering the PECFA fund have been developed, which are consistent with the JCRAR

directive and which are expected to significantly mitigate the backlog of claims to this oversubscribed fund.

Publication Dates: February 23 & March 1, 1999

Effective Date: February 23, 1999

Expiration Date: July 23, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Commerce

**(Financial Resources for Communities,
Chs. Comm 105 to 128)**

1. Rules adopted revising **ch. Comm 113**, relating to the annual allocation of volume cap on tax-exempt private activity bonds.

Finding of Emergency & Rule Analysis

The Department of Commerce finds that an emergency exists and that the adoption of a rule is necessary for the immediate preservation of public health, safety and welfare.

Several areas in the State of Wisconsin have recently experienced severe economic distress due to large plant closings which have put hundreds of Wisconsin residents out of work. As a result of two large paper mills being shut down a year ago, 1997 Wisconsin Act 237 created s. 560.147, Stats., authorizing the Rapid Response Fund within the Wisconsin Development Fund. The fund is part of the Rapid Response Initiative, which assists areas affected by these and future closings. Commerce is now proposing as part of this initiative a Rapid Response Set Aside within the volume cap allocation process which will enable businesses in these distressed areas to obtain the financing they need to make the necessary capital investments to create and retain jobs. Several projects are pending in that need this change in order to move forward with their plans. Allocation of volume cap is in highest demand in the spring and summer due to the construction cycle. The Rapid Response set-aside must be in place as soon as possible in order for projects to receive allocation and begin construction as soon as possible. Jobs cannot be created or retained until projects go forward.

Publication Date: February 17, 1999

Effective Date: February 17, 1999

Expiration Date: July 17, 1999

Hearing Date: April 12, 1999

2. Rules adopted creating **ch. Comm 112**, relating to the Wisconsin Development Zone Program.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that the adoption of a rule is necessary for the immediate preservation of public health, safety and welfare.

Pursuant to ss. 560.70 to 560.797, Stats., the Department of Commerce is responsible for administering Wisconsin Development Zone Program. These rules are being adopted to incorporate in the administrative code the recent amendments contained in 1997 Wis. Act 27 that entirely changed the eligibility and the criteria for certified development zone businesses and the process for the verification and the claiming of tax credits. Section 560.785, Stats., directs the Department of Commerce to develop rules and exceptions to those rules concerning the eligibility for tax benefits. After a review and evaluation of all the certified businesses and their projects a number of exceptions have been identified in order to meet the needs of different areas of the state and to fulfill our commitments to businesses that were made prior to this legislation.

In order to process claims for tax years beginning on or after January, 1, 1998, these rules must be made available immediately.

Publication Date: February 25, 1999

Effective Date: February 25, 1999

Expiration Date: July 25, 1999

EMERGENCY RULES NOW IN EFFECT (3)

Department of Corrections

1. Rules were adopted amending **s. DOC 328.21**, relating to absconders.

Finding of Emergency

The Department of Corrections finds that an emergency exists and that a rule is necessary for the immediate preservation of the public safety. A statement of the facts constituting the emergency is: A recent legislative enactment providing funding for the Department of Corrections to create an absconder unit in southeastern Wisconsin. Currently there are 7,694 probationers or parolees that have absconded from community supervision. To make community supervision more meaningful and promote accountability among offenders the legislature directed the Department of Corrections to make efforts to locate and apprehend offenders that have absconded from community supervision. The current administrative rule allows the Department of Corrections to search an offenders residence only for contraband. This rule amendment allows a search of an offender's residence for contraband or an offender.

Publication Date: December 3, 1998

Effective Date: December 3, 1998

Expiration Date: May 2, 1999

Hearing Dates: March 1 and 3, 1999

Extension Through: June 30, 1999

2. Rules were adopted revising **ch. DOC 349**, relating to holding juveniles in municipal lockup facilities.

Finding of Emergency

The Department of Corrections finds that an emergency exists and that rules are necessary for the immediate preservation of public safety. A statement of the facts constituting the emergency is: A recent session law, 1997 Wis. Act 296, created s. 938.209(2m), Stats., which permits the holding of juveniles in municipal lockup facilities if the facilities meet certain criteria. This act took effect on July 1, 1998. A municipal lockup facility may only hold juveniles who are alleged to have committed a delinquent act if the department of corrections approves the facility for the holding of juveniles. In addition, the lockup facility may only hold the juvenile for no more six hours. Also, there must be sight and sound separation between any juveniles and adults being held in the lockup. Finally, the lockup facility may only hold the juvenile for investigative purposes.

Under current rule a municipal lockup facility may not hold juveniles. The act authorizes the department of corrections to promulgate rules establishing minimum requirements for the approval of a municipal lockup facility as a suitable place for holding juveniles who are alleged to have committed a delinquent act and for the operation of the facility. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to establish an approval process and operational standards for the safety of the public and juveniles while permanent rules are being developed.

This order:

1. Adopts the statutory definitions of adult, delinquent, and juvenile.

2. Defines the term secure custody status.

3. Establishes the authority and purpose of establishing minimum standards for the holding of juveniles in municipal lockup facilities.

4. Prohibits the holding of juveniles in municipal lockup facilities, except if the juvenile is alleged to have committed a delinquent act.

5. Requires that the lockup facility provide juveniles notification of policies and procedures of the facility regarding the holding of juveniles and facility programs, including health screening and care, suicide prevention, control and administration of medications, and communicable disease control.

6. Provides that only juveniles who are alleged to have committed a delinquent act may be held in a municipal lockup facility.

7. Provides that juveniles who are alleged to have committed a delinquent act may be placed in secure custody status for a period of time not to exceed 6 hours.

8. Provides that the lockup administrator shall develop and implement policies and procedure to ensure sight and sound separation between juveniles and adults who are being held in the lockup facility.

9. Provides that lockup facility staff shall physically observe juveniles at least once every 20 minutes at irregular intervals and shall document the observations. If the juvenile is identified by the facility staff as being at risk (for example, suicidal tendency, under the influence of drugs or alcohol, or mental disturbance) the observations shall be at least once every 15 minutes at irregular intervals.

10. Requires that juvenile records be maintained in a confidential manner and kept separate from adult records, in accordance with s. 938.396, Stats.

The order provides for including in chapter DOC 349, Municipal Lockup Facilities, the rules for holding juveniles who are alleged to have committed a delinquent act.

Publication Date: December 10, 1998

Effective Date: December 10, 1998

Expiration Date: May 9, 1999

Hearing Date: February 15, 1999

Extension Through: July 7, 1999

3. Rules adopted creating **ch. DOC 330**, relating to pharmacological treatment of serious child sex offenders.

Finding of Emergency

The Department of Corrections finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is: A recent session law, 1997 Wis. Act 284, created s. 304.06(1q) Stats., which will become effective January 1, 1999, and authorizes the department to require pharmacological treatment (chemical castration) for certain child sex offenders as a condition of probation or parole to accomplish the objectives of protection of the public or treatment of serious child sex offenders. Pharmacological intervention cannot begin without administrative rules. Development and promulgation of permanent rules will take approximately six months to complete. Emergency rules are necessary to implement the program for the safety of the public while permanent rules are being developed.

Publication Date: January 1, 1999

Effective Date: January 1, 1999

Expiration Date: May 31, 1999

Hearing Dates: March 1, 2 and 3, 1999

EMERGENCY RULES NOW IN EFFECT

Emergency Response Board

Rules adopted revising **s. ERB 1.04**, relating to reporting requirements for gasoline and diesel fuel present at 10,000 pounds or more at retail gas stations.

Finding of Emergency and Rule Analysis

The Wisconsin Division of Emergency Management finds that an emergency exists and that adoption of this rule is necessary for the immediate preservation of public health, safety, and welfare. The facts constituting the emergency are as follows:

The U.S. Environmental Protection Agency has stated in writing, its intent to implement a rule change effective March 1, 1999. The rule change will increase the 42 USC 11021 and 11022 reporting threshold for gasoline to 75,000 gallons and for diesel fuel to 100,000 gallons, when stored in below ground tanks at retail gas stations. This change will have the effect of exempting most gasoline stations from EPCRA reporting requirements. It will also mean that gasoline and diesel fuel that is present in 10,000 pounds or more will not be uniformly reported under EPCRA. If implemented, this rule change will occur during a reporting period and will take effect on the deadline for submission of 1999 reporting information, which applies to chemicals that were present in 1998. This will create a situation where facilities reporting prior to the rule change would be reporting under one requirement and those reporting after the March 1, 1999 deadline would be reporting under a different requirement. It is not clear which requirement would affect those facilities that submit documentation prior to the intended rule change, that is, by the reporting deadline, and whether these facilities would have to amend their submissions to be in compliance with the law.

The most commonly spilled substances in Wisconsin are petroleum products, gasoline and diesel fuel. This information is important to fire departments as well as Local Emergency Planning Committees as an emergency response planning tool. The Tier Two chemical information is provided to the local fire department with jurisdiction over the facility and to the appropriate Local Emergency Planning Committee. This is the only comprehensive list of hazardous materials that is available to fire departments and Local Emergency Planning Committees.

Further, in Wisconsin, individual preprinted forms are printed in mid December and mailed out by the first week of January to assist facilities in meeting reporting requirements. This is well before the time when U.S. EPA has stated that they intend to implement a rule change. Because EPA intends to implement the change on the March 1, 1999 reporting deadline, it is not possible to mail forms out at that time and have facilities make the necessary submissions by the March 1, 1999 deadline. Wisconsin facilities have come to expect that inventory reporting materials will be mailed out in a time frame that will allow adequate time for the facility to meet the March 1, 1999 reporting deadline. Facilities that fail to submit the necessary reporting materials by the March 1, 1999 reporting deadline would be in non-compliance with federal and state EPCRA reporting requirements.

Individual states do not have the authority to implement requirements under EPCRA which are less stringent than the federal requirements. This emergency rule would maintain the existing reporting requirements that have been in place since the inception of the program in 1986. Specifically, this rule states that the reporting thresholds for gasoline and diesel fuel would be maintained at 10,000 pounds for retail gas stations. This emergency rule will allow Wisconsin Emergency Management the ability to distribute reporting materials in a timely manner and will permit the facilities to submit the necessary paperwork prior to the March 1, 1999 deadline. By allowing facilities sufficient time prior to the March 1, 1999 deadline, they will have the opportunity to make the necessary submissions under EPCRA and to remain in compliance with federal and state law. This will also insure that all gasoline and

diesel fuel stored in amounts of 10,000 pounds or more in the state is reported under EPCRA. This in turn will insure that all fire departments and Local Emergency Planning Committees will continue to have access to a comprehensive listing of hazardous materials under the Emergency Planning and Community Right-to-Know Act.

Publication Date: January 20, 1999
Effective Date: January 20, 1999
Expiration Date: June 19, 1999
Hearing Dates: March 16 & 19, 1999

EMERGENCY RULES NOW IN EFFECT

Financial Institutions

(Division of Banking)

Rules adopted renumbering and revising **ch. RL 41** to be **ch. DFI-Bkg 41**, relating to mortgage banking.

Exemption From Finding of Emergency

Statutory Authority: ss. 224.72 (8) and 224.73 (3); and 1997 Wis. Act 145, Section 72.

This emergency rule sets forth the registration and renewal of registration fees for mortgage bankers, loan originators and mortgage brokers; the transfer fee for loan originators; and the registration periods for all registrations and renewals of registrations.

Publication Date: December 4, 1998
Effective Date: December 4, 1998
Expiration Date: May 3, 1999
Hearing Date: March 3, 1999
Extension Through: July 1, 1999

EMERGENCY RULES NOW IN EFFECT

Financial Institutions

(Division of Securities)

Rules adopted creating **s. DFI-Sec 2.01(1)(c)6 and (d)6.**, relating to designating alternative accounting guidelines for the preparation of financial statements for certain governmental issuers of securities.

Finding of Emergency

The Division of Securities of the Department of Financial Institutions for the State of Wisconsin finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows.

These emergency rules are necessitated by a new accounting guideline relating to disclosures about Year 2000* issues applicable to the preparation of financial statements for governmental issuers of securities as required by Governmental Accounting Standards Board Technical Bulletin 98-1, *Disclosures about Year 2000 Issues* ("GASB TB 98-1", or "Guideline"). The existence of this issue and the need for emergency rule treatment to assist governmental issuers was brought to the attention of the Division by representatives of Wisconsin public accounting groups and Wisconsin bond attorneys who recently learned about a Report by the American Institute of Certified Public Accountants regarding GASB TB 98-1.

As a result of that Report (and as particularized below) many Wisconsin governmental issuers would have the audit opinions for their financial statements for years ending after October, 1998, qualified with respect to disclosures about Year 2000 issues. Thus beginning in approximately March and April of 1999 and continuing through the accounting period ending 12/31/99, that new accounting Guideline will adversely impact the ability of Wisconsin and other state and local governmental securities issuers to continue to use on an "automatic"/self-executing basis, the existing securities registration exemption in s. 551.22(1)(a) of the Wisconsin Securities Law to offer and sell their debt securities to public investors in Wisconsin.

Over the years and to date, Wisconsin and other state and local governmental securities issuers having "full-GAAP" financial statements (e.g. prepared in accordance with generally accepted accounting principles) have been able to sell their debt securities to Wisconsin public investors in reliance on automatic use of the registration exemption in s. 551.22(1)(a), Wis. Stats., without the need for any exemption or other filing with the Division.

GASB TB 98-1 requires footnote disclosure of Year 2000 information regarding a governmental issuer's preparedness in terms of making its systems and equipment Year 2000 compliant. GASB TB 98-1 applies to financial statements dated October 31, 1998, and terminates for financial statements issued for purposes of the accounting period ending December 31, 1999, unless systems and equipment are not Year 2000 compliant as of the balance sheet date. In response to GASB TB 98-1, members of the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA) issued a Report under the title "AICPA Illustrative Reporting Guidance on Year 2000 Disclosures Made Under GASB TB 98-1, Issued October 22, 1998." That Report raised the concern that in light of the unprecedented nature of the Year 2000 issue, the required disclosures will be neither ascertainable by management nor verifiable by auditors. As a result, the AICPA strongly recommended that auditors issue qualified opinions (scope limitations) with respect to such Year 2000 issue disclosures.

Consequently, all Wisconsin and other governmental securities issuers whose financial statements would contain such qualified opinions, would not meet (in the absence of the emergency rules) the "full-GAAP" financial statement requirement for automatic use of the registration exemption in 551.22(1)(a), Wis. Stats. Thus, such issuers would either have to go through a regulatory filing and review procedure with the Division prior to each offering, or would have to restrict the initial offering to securities law provisions that would preclude underwriters from reoffering those securities to investors in the primary and secondary markets.

In the absence of the emergency rules, governmental securities issuers would be adversely affected by the costs of making securities filings with their attendant delays. Also, even though Year 2000 issues equivalently affect private corporate issuers of securities, because there is no counterpart to GASB TB 98-1 within the standards promulgated by the Financial Accounting Standards Board applicable to private corporate securities issuers, the additional costs and filing delays would be singularly borne by governmental securities issuers (if the emergency rules were not adopted).

Finally, having a filing requirement under the Wisconsin Securities Law be triggered for Wisconsin and other state and local governmental securities offerings solely because of an auditor's qualification in an audit report on the Year 2000 issue, would result in added regulatory filing and review processes and procedures under the Wisconsin Securities Law that would not provide any "value added" investor protection benefits.

Therefore, in similar fashion to emergency rule-making action taken by the Division in 1994 and 1996 regarding specific accounting issues which occurred at those times, and for the purpose of alleviating the disruption that would occur in the borrowing/bonding plans of Wisconsin and other state and local governmental issuers that regularly claim exemption status under sec. 551.22(1)(a), Wis. Stats., for the offer and sale of their debt securities in Wisconsin, the Division, in consultation with representatives of Wisconsin accounting groups and Wisconsin

bond attorneys, is adopting these emergency rules designating an alternative-to-full-GAAP financial statement requirement (when the governmental issuer's financial statements are full-GAAP) where the auditor's opinion is qualified in accordance with GASB TB 98-1 with respect to disclosures concerning Year 2000 issues. As a result of such emergency rules, those Wisconsin and other state and local governmental securities issuers affected by GASB TB 98-1 will be able to continue to rely on the "automatic" registration exemption under 551.22(1)(a), Wis. Stats., for their securities offerings.

[Because this issue which has been triggered by GASB TB 98-1 has a limited "shelf life" such that no permanent rules relating to it will be needed after December 31, 2000, when action is taken by the Division to promulgate identical permanent rules to become effective upon expiration of the emergency rules, the permanent rules will provide for a December 31, 2000 "sunset" date, after which the permanent rules on the issue will no longer be effective.]

*The Year 2000 problem is the result of shortcomings in electronic data-processing systems and equipment that may adversely affect operations in the year 2000 and beyond. The problem stems from the use within electronic systems and equipment of two-digit storage for calendar years. Affected and uncorrected systems and equipment may be unable to distinguish the year 2000 from the year 1900; as a result, such systems may process inaccurately or stop processing altogether.

Publication Date: February 25, 1999

Effective Date: March 1, 1999

Expiration Date: July 29, 1999

EMERGENCY RULES NOW IN EFFECT (4)

Health & Family Services

(Management, Technology & Finance,

Chs. HFS 1---)

(Health, Chs. HFS 110---)

1. Rules adopted creating **ch. HFS 13** and revising **ch. HSS 129**, relating to reporting and investigating caregiver misconduct.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the rules included in this order are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Since July 1, 1991, the Department has had rules, s. HSS 129.10, which establish and provide for the maintenance of a registry of persons eligible by training and testing to be employed in Wisconsin as nurse assistants working in hospitals, nurse assistants working in nursing homes, home health agency aides and, since October 1, 1991, hospice program aides. The rules implemented s. 146.40 (4g), Stats. The rules were amended by emergency order effective April 1, 1992, to add to the registry, as directed by s. 146.40 (4g) and (4r), Stats., all substantiated findings of allegations that persons working in any of these caregiver capacities had abused or neglected a resident or patient or misappropriated a resident's or patient's property, and making that information available to prospective employers and other interested persons on request.

This rulemaking order amends ch. HFS 129 to take out of it the misconduct part of the current registry, that is, the part consisting of substantiated findings of misconduct toward clients by caregivers working as nurse aides in hospitals or nursing homes or for home health agencies or hospice programs, and to include that part in a new ch. HFS 13 created by this order.

A recent session law, 1997 Wis. Act 27, amended s. 146.40 (4g) and (4r), Stats., to provide for expansion of the misconduct part of the registry so that, beginning October 1, 1998, the Department would add to the registry substantiated findings of allegations that any other person employed by or under contract with a hospital, nursing home, home health agency or hospice program or any person employed by or under contract with any of several other types of facilities, agencies and programs or services licensed, certified or registered by the Department abused or neglected a client served by the facility, agency or program or service or misappropriated a client's property. The other types of "entities" covered by the expanded misconduct part of the registry and the reporting, review and investigation, entering findings and appeal procedures under s. 146.40 (4r), Stats., are the following: community-based residential facilities, residential care apartment complexes (formerly called assisted living facilities), certified adult family homes (only if certified by the Department), licensed adult family homes (only if licensed by the Department), certified community mental health and substance abuse programs or services, rural medical centers and ambulance service providers.

The new ch. HFS 13 covers the structure of the misconduct part of the caregiver registry, the information included in it and release of registry information; a requirement that an entity upon learning of an incident of alleged caregiver misconduct take whatever measures are necessary to protect clients pending a finding; mandatory reporting by entities of allegations of caregiver misconduct, with penalties for failure to report incidents; reporting by other persons; review by the Department of reports received from entities and concerned individuals alleging abuse or neglect of a client or misappropriation of a client's property, and follow-up investigation by the Department as necessary; determination by the Department either that an allegation is or is not substantiated, and notice to the subject of the report, if an allegation is substantiated, that the finding will be entered on the misconduct part of the caregiver misconduct registry, and the consequences of that action (which for some persons employed by or under contract with an entity may mean being barred indefinitely from similar employment and for others being barred from similar employment unless rehabilitation is demonstrated), unless he or she contests that determination by requesting a hearing; notice to the subject of a report that if the finding is included in the registry, he or she may add a rebuttal statement which will be included with the finding; and how to request a hearing, how the hearing will be conducted and the hearing decision.

This order creating ch. HFS 13 and amending ch. HSS 129 is being published as an emergency rulemaking order to take effect on October 1, 1998. That is the date on which the amendments to s. 146.40 (4g) and (4r), Stats., that expand the misconduct part of the registry will take effect. The rules are necessary for implementation of the amended statutes. The intent of the amended statutes and new rules is to better protect clients of the specified Department-regulated facilities, agencies, programs and services from being harmed. The rules are being published as emergency rules so that they can go into effect when the amended statutes take effect rather than up to 9 months later which is how long it will take to promulgate permanent rules.

Publication Date: October 1, 1998

Effective Date: October 1, 1998

Expiration Date: February 28, 1999

Hearing Dates: January 12, 20 & 26, 1999

Extension Through: June 27, 1999

2. Rules adopted creating **ch. HFS 12**, relating to caregiver background checks.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Sections 48.685 and 50.065, Stats., recently created by 1997 Wisconsin Act 27, apply to the Department in its functions of

licensing, certifying, registering or approving some persons to provide care or treatment to other persons; to county social service and human service departments that license foster homes or treatment foster homes for children and carry out adoption home studies; to private child-placing agencies licensed to do the same; and to school boards that contract for day care programs under s. 120.13(14), Stats. The law also applies to the entities licensed, certified, registered or approved and their employees or contracted service providers.

An agency is prohibited from licensing, certifying, registering or approving a person if the agency knew or should have known that the person has been convicted of, or has a pending charge for, a serious crime, is found to have abused or neglected a client or child or to have misappropriated a client's property; or is required to be credentialed by the Department of Regulation and Licensing (DRL) but whose credential is not current or is limited so as to prevent the provision of adequate client care. Similarly, entities planning to hire or contract with a person expected to have access to clients or children may not hire or contract with the person if the entity knew or should have known of the existence of a prohibited condition.

With respect to a person applying for a license to operate an entity or for approval to reside at an entity, an agency is required to obtain a criminal history search, information contained in the Department's caregiver misconduct registry, DRL information regarding credential status, if applicable, and Department information regarding any substantiated reports of child abuse or neglect and licensing history information. That information must also be obtained by entities for prospective employees and contractors.

The Department is required to develop a background information form and provide it to any regulated or approved person, and a county department and licensed child-placing agency is required to provide it to a foster home or treatment foster home applicant or pre-adoptive applicant and a school board is to provide the Department's background information form to any proposed contracted day care applicant or provider under s. 120.13 (14), Stats. Likewise, an entity is to provide the background information form to any employee or prospective employee having or expected to have access to any of its clients. If the background information form returned to an entity by an employee or prospective employee indicates that the person is not ineligible to be employed or contracted with or permitted to reside at an entity for a reason specified under the statutes or as provided in rule, an entity may employ or contract with the person or permit the person to reside at the entity for not more than 60 days pending the receipt of background check information.

For some serious crimes that would otherwise bar a person from regulatory approval or from being employed by or under contract with or residing at an entity, the statutes permit a person convicted of a crime, provided certain conditions are met, to ask an agency for rehabilitation review, that is, for an opportunity to demonstrate that he or she is rehabilitated and so the bar can be lifted.

These are the Department's rules for administration of ss. 48.685 and 50.065, Stats., as created by Act 27 and amended by 1997 Wisconsin Act 237. The rules repeat the statutory requirements and add more detail for administering them, add procedures for handling rehabilitation review requests, add definitions for "serious crime" and "under the entity's control" and other pertinent definitions and add a crimes list as Appendix A.

The rules are being published by emergency order to take effect on October 1, 1998, the same date that the statutes they implement will take effect, rather than up to 9 months later which is how long it will take to promulgate permanent rules. The rules are necessary for implementation of the new statutes. The intent of the statutes and rules is to better protect clients of the regulated service providers from being harmed.

The new background check statutes and rules apply beginning October 1, 1998 to entities initially approved on or after that date, persons that entities hire or contract with on or after that date and nonclients who take up residence at an entity on or after that date. The statutes and rules apply beginning October 1, 1999 to entities initially approved prior to October 1, 1998, persons that entities

hired or contracted with prior to October 1, 1998 and nonclients who lived at an entity prior to October 1, 1998.

Publication Date: October 1, 1998
Effective Date: October 1, 1998
Expiration Date: February 28, 1999
Hearing Dates: January 12, 20 & 26, 1999
Extension Through: June 27, 1999

3. Rules adopted amending chs. HFS 12, relating to background checks.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The Department on October 1, 1998 published an emergency rulemaking order creating ch. HFS 12, relating to uniform procedures for checking the backgrounds of persons who apply to provide or are providing care or treatment to persons who need that care or treatment, and for barring persons because of specified convictions, findings or charges substantially related to the care of clients from operating a service provider organization, providing care or treatment to the clients of a service provider or otherwise having contact with the clients of a service provider. Chapter HFS 12 includes an appendix which consists of a list of crimes. Some of the listed crimes **permanently** bar a person who was ever convicted of the crime from receiving regulatory approval from the Department to provide care or treatment to vulnerable people; from being licensed by a county human service or social service department or by a private child-placing agency to operate a foster home for children; from contracting with a school board to provide a day care program; from being employed by or under contract to a service provider to provide care or treatment to the service provider's clients; and from residing as a nonclient at the service-providing entity. Others of the listed crimes temporarily bar a person convicted of the crime from doing any of those things, pending demonstration that the individual has been rehabilitated. While the remaining few crimes in the Crimes List, called "less serious crimes," do not bar a person with a conviction from providing care or treatment to others, they do require the regulatory agency or employer to impose special precautionary measures to ensure the protection of persons receiving care or treatment.

This order modifies the Crimes List published on October 1, 1998 as Appendix A to ch. HFS 12.

The original Crimes List consists of 159 crimes listed by statute number, 45 of which are permanent bar crimes for all programs. Some 105 crimes are rehabilitation review-eligible crimes (bar with rehab crimes), and 3 are less serious crimes (crimes of lesser significance than serious crimes). As for unlisted crimes, a regulatory agency, employer or contractor is supposed to consider whether conviction for any unlisted crime is substantially related to caregiving and, if so, can treat it as a permanent bar crime or a crime of lesser significance, and take action accordingly.

The modified Crimes List consists of 156 crimes listed by statute number, name and program sanction, 26 of which are permanent bar crimes for all programs. Some crimes have been moved from permanent bar status to bar with rehab status, crimes of lesser significance status or substantially related (unlisted) status, and some crimes have been moved from bar with rehab status to crimes of lesser significance status or substantially related (unlisted) status. The crimes of lesser significance are removed altogether from the Crimes List and made a separate list under s. HFS 12.11(5) (a) 3., so that the Crimes List is left with only "serious crimes."

The Department is modifying the Crimes List at this time because after publication of the original list, that is, as the Crimes List began to be used to make decisions about licensing or certifying service providers and hiring or contracting for caregiver staff, and especially in anticipation of agencies having to withdraw some current licenses and certifications and entities having to dismiss some current caregiver staff and terminate some caregiver contracts,

Department staff heard from and met with many affected individuals and representatives of affected programs and discussed with them the need, reasonableness and practicality of categorizing some criminal convictions in ways they had been categorized. These discussions led the Department to reconsider the appropriateness of the sanctions for some of the specified crimes, in particular some of the crimes that the Department had designated permanent bar crimes. The Department also determined once the Crimes List began to be used that corrections and clarifications were needed in it.

The Department is modifying the ch. HFS 12 emergency rules by emergency order because of the critical importance of the appended Crimes List for proper implementation of the statutory caregiver background check requirements. Those requirements are directed at protecting people receiving care and treatment from being harmed. The revised Crimes List is part of the proposed permanent rules that will replace the emergency rules, but the replacement permanent rules will not take effect until about June 1, 1999.

Publication Date: December 12, 1998
Effective Date: December 12, 1998
Expiration Date: May 4, 1999
Extension Through: June 27, 1999

4. Rules adopted revising **chs. HFS 12 and 13**, created as an emergency rules relating to caregivers background checks and reporting of caregiver misconduct.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The Department on October 1, 1998 published an emergency rulemaking order creating ch. HFS 12, relating to uniform procedures for checking the backgrounds of persons who apply to provide or are providing care or treatment to persons who need that care or treatment, and for barring persons because of specified convictions, findings or charges substantially related to the care of clients from operating a service provider organization, providing care or treatment to the clients of a service provider or otherwise having contact with the clients of a service provider. Chapter HFS 12 included an appendix which consisted of a list of crimes. That Crimes List was modified by emergency order published on December 12, 1998. This order, which is being published following the Department's public hearings on the emergency rules and the proposed replacement permanent rules, makes further significant changes in the Crimes List and other parts of the ch. HFS 12 emergency rules.

The Crimes List appended to ch. HFS 12 is modified by this order to move several crimes from "permanent bar" status to "bar with rehabilitation" status, to place time limits on having to demonstrate rehabilitation for certain other crimes, and to remove some crimes altogether from the Crimes List. Also in ch. HFS 12, definitions have been added for "access" and "Department-designated tribe" and have been significantly revised for "caregiver" and "under the entity's control." Indian tribes designated by the Department are permitted to conduct rehabilitation reviews for bar with rehabilitation crimes.

This order also makes changes in ch. HFS 13, emergency rules for reporting caregiver misconduct and for maintenance of a caregiver misconduct registry. Those emergency rules were also published on October 1, 1998. Changes made in ch. HFS 13 by this order include addition of definitions for "access" and "course of conduct" and significantly revised definitions for "abuse," "caretaker," and "under the entity's control," and permission is given for the subject of a report to have a representative present when the subject has any contact with Department investigators.

The Department is modifying the chs. HFS 12 and 13 emergency rules by emergency order at this time because of their critical importance for proper implementation of the statutory caregiver background check and caregiver misconduct reporting

requirements. Those requirements are directed at protecting people receiving care and treatment from being harmed. The rule changes, including revision of the Crimes List, have been incorporated in the proposed permanent rules that will replace the emergency rules, but the replacement permanent rules will not take effect until June 1, 1999 at the earliest.

Publication Date: February 27, 1999
Effective Date: February 27, 1999
Expiration Date: May 4, 1999
Extension Through: June 27, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Health and Family Services (Health, Chs. HSS/HFS 110—)

1. Rules adopted amending ss. **HFS 119.07 (6) (b) and 119.15**, relating to the Health Insurance Risk-Sharing Plan.

Exemption From Finding of Emergency

Section 149.143 (4), Stats., as affected by 1997 Wisconsin Act 27, permits the Department to promulgate rules required under s. 149.143(2) and (3), Stats., as affected by Act 27, by using emergency rulemaking procedures except that the Department is specifically exempted from the requirement under s. 227.24(1) and (3), Stats., that it make a finding of emergency. These are the rules. Department staff consulted with the HIRSP Board of Governors on December 11, 1998 on the proposed rules, as required by s. 149.20, Stats.

Analysis Prepared by the Department of Health and Family Services

The State of Wisconsin in 1981 established a Health Insurance Risk-Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state. One type of coverage provided by HIRSP is supplemental coverage for persons eligible for Medicare. This coverage is called Plan 2. Medicare (Plan 2) has a \$500 deductible. Approximately 17% of the 7,123 HIRSP policies in effect on October 31, 1998 were of the Plan 2 type.

The Department through this rulemaking order is amending ch. HFS 119 in order to update HIRSP Plan 2 premium rates by just over 10% in accordance with the authority and requirements set out in s. 149.143 (3) (a), Stats. The Department is required to set premium rates by rule and the rates must be calculated in accordance with generally accepted actuarial principles.

The Department through this order is also adjusting the total HIRSP insurer assessments and provider payment rates in accordance with the authority and requirements set out in s. 149.143 (2)(a)3. and 4., Stats., as affected by Act 27.

Publication Date: December 31, 1998
Effective Date: January 1, 1999
Expiration Date: May 31, 1999
Hearing Date: March 11, 1999

2. Rules adopted creating **ch. HFS 114**, relating to neonatal intensive care unit training grants.

Exemption From Finding of Emergency

The Legislature in s. 9122 (3tz) of 1997 Wisconsin Act 237 directed the Department to promulgate rules required under s. 9122 (3ty) of 1997 Wisconsin Act 237 by using emergency rulemaking procedures but exempted the Department from the requirement under s. 227.24 (1) and (3), Stats., to make a finding of emergency. These are the rules.

Analysis Prepared by the Department of Health and Family Services

Section 9122 (3ty) (b) of 1997 Wisconsin Act 237 directs the Department to distribute up to \$170,000 each year in state fiscal years 1999 and 2000 to provide up to 10 grants to public or private hospitals to pay for specialized training and on-site consultation and support of medical personnel of neonatal intensive care units in the principles and practice of developmentally supportive and family-centered care for high-risk infants and their families. Section 9122 (3ty) (c) of Act 237 directs the Department to promulgate rules that establish criteria and procedures for awarding grants. The rules are to define "specialized training and on-site consultation and support," which must include a minimum of 40 hours of formal training and 160 hours of practice work.

This order creates ch. HFS 114 relating to distribution of grants to applicant public or private hospitals' neonatal intensive care units to pay for training of staff in the principles and practice of developmentally supportive and family-centered care. The rules include a process by which hospitals may apply for training funds, requirements relating to the training and requirements relating to training center record-keeping and reporting.

Publication Date: January 21, 1999
Effective Date: January 21, 1999
Expiration Date: June 20, 1999
Hearing Date: April 7, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Insurance

1. Rule adopted amending **s. Ins 2.80 (2) (intro.) and (a)**, relating to delaying effective date for NAIC valuation of life insurance policies model regulation, ("XXX"), from January 1, 1999 to July 1, 1999.

Finding of Emergency

Statutory authority: ss. 601.41 (3), 227.24

Statute interpreted: none

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

On December 16, 1997 the Commissioner created **Ins 2.80**, Wis. Adm. Code in order to adopt the 1995 National Association of Insurance Commissioners ("NAIC") valuation of life insurance policies model regulation, or "XXX". This new rule concerning requirements for determining the valuation of reserve liabilities for life insurance policies is currently to take effect on January 1, 1999. Recently the NAIC agreed to consider a revised model regulation and the NAIC is expected to formally approve such a model early in 1999. Wisconsin is the only state that has set January 1, 1999 as an effective date for the 1995 model regulation. This emergency order is necessary to allow time to consider implementation of the revised model regulation once it is adopted by the NAIC.

Publication Date: December 23, 1998
Effective Date: January 1, 1999
Expiration Date: May 31, 1999
Hearing Date: March 12, 1999

2. Rules adopted amending **s. Ins 3.39 (34)(b)1. and 2., 3.b., and 6.**, relating to guarantee issue eligibility for Medicare Supplement insurance.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

These changes clarify the persons eligible who have the right to have policies guaranteed issued. The changes track the recent revisions in the NAIC (National Association of Insurance Commissioners) model Medicare Supplement regulations. In order to provide more certainty and provide guarantee issue to the appropriate persons in Wisconsin, it is necessary that the change be put into effect as soon as possible. In addition, other permanent changes to the Medicare Supplement requirements are effective February 1, 1999 and this change effective the same date will allow insurers to modify their policies one time rather than two.

Publication Date: January 28, 1999
Effective Date: February 1, 1999
Expiration Date: July 1, 1999
Hearing Date: March 3, 1999

EMERGENCY RULES NOW IN EFFECT

Natural Resources

(Fish, Game, etc., Chs. NR 1--)

Rules adopted creating **s. NR 20.33 (5)**, relating to special closure of the sturgeon spearing season if harvest reaches or exceeds 80% of the total allowable harvest.

Finding of Emergency

The department of natural resources finds that an emergency exists and rule is necessary for the immediate preservation of the public health, safety or welfare. The facts constituting this emergency are:

Winter water clarity in Lake Winnebago has been improving steadily over the last decade at a rate faster than anticipated, which has substantially increased the potential for overharvest of sturgeon by spearers. Even with the new harvest restrictions passed in 1996, exceptionally clear water during the 1998 spearing season resulted in a total harvest of 2,051 fish, which was in excess of our total allowable harvest goals. An emergency order is needed to prevent overharvest of sturgeon during the 1999 season while permanent rules are being developed for implementation in the year 2000.

Publication Date: February 5, 1999
Effective Date: February 5, 1999
Expiration Date: July 5, 1999
Hearing Date: March 16, 1999

EMERGENCY RULES NOW IN EFFECT

Natural Resources

(Environmental Protection-Water Regulation, Chs. NR 300-)

Rules adopted creating **ch. NR 303**, relating to department determinations of navigability for farm drainage ditches.

Exemption From Finding of Emergency

The Department was directed by the JCRAR under s. 227.26 (2) (b), Stats., to promulgate emergency rules regarding navigability

Analysis prepared by the Department of Natural Resources

Statutory authority: s. 227.26 (2)(b)

Statutes interpreted: s. 30.10 (4)(c)

This order codifies present department program guidance for staff making navigability determinations for farm drainage ditches, identifying various methods and information to be relied on when making such determinations.

Publication Date: May 1, 1999

Effective Date: May 1, 1999

Expiration Date: September 28, 1999

EMERGENCY RULES NOW IN EFFECT

Public Instruction

Rule adopted revising s. PI 3.03 (6) (b) 3., relating to alternate teaching permits.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

1997 Wis. Act 237, the budget adjustment bill, modified several provisions relating to professional teaching permits. Specifically, an individual who holds a bachelor's degree in engineering, music, art, foreign language, computer science, mathematics or science from an accredited institution of higher education, has at least 5 years of experience as a professional in the subject area in which his or her degree was awarded and demonstrates, to the satisfaction of the state superintendent, competency in that subject area may apply to the state superintendent for enrollment in a 100 hour alternative teacher training program. The state superintendent shall grant a professional teaching permit to any person who satisfactorily completes the alternative teaching program.

Since the provisions under the Act became effective this summer, and alternative teaching programs will be offered in the near future, rules must be in place as soon as possible in order to notify potential applicants of the alternative teaching permit program requirements.

Publication Date: November 1, 1998

Effective Date: November 1, 1998

Expiration Date: March 31, 1999

Hearing Dates: January 4, 5, 6 & 7, 1999

Extension Through: May 29, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Public Service Commission

1. Rules adopted revising ch. PSC 4, relating to small generating plants.

Finding of Emergency

In order to preserve the health, safety, and welfare of Wisconsin ratepayers by ensuring a reliable energy supply in 2000 and beyond, the Commission's review process of proposed new generating plants that are less than 100 MW in size must be amended. A revision is needed so the review process for such projects can be completed in time to allow construction of necessary projects, if approved, by

June 1, 2000. Permanent rules cannot be adopted in time to affect the Commission's review period. An emergency rule is necessary to change the Commission's review process immediately.

Publication Date: January 19, 1999

Effective Date: January 19, 1999

Expiration Date: June 18, 1999

2. Rules adopted creating ch. PSC 186, relating to standards for water and sewer service in mobile home parks.

Exemption From Finding of Emergency

These rules are now being adopted as emergency rules effective May 1, 1999, as directed by section 22(2) of 1997 Wis. Act 229.

Publication Date: May 1, 1999

Effective Date: May 1, 1999

Expiration Date: September 28, 1999

EMERGENCY RULES NOW IN EFFECT

Regulation & Licensing

Rules were adopted creating chs. RL 131 to 135, relating to the registration and regulation of home inspectors.

Exemption From Finding of Emergency

The Department of Regulation and Licensing finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Section 3 of 1997 Wis. Act 81 states that the department is not required to make a finding of emergency; however, the department offers the following information relating to the promulgation of these rules as emergency rules. The new regulation of home inspectors was created in 1997 Wis. Act 81. The Act was published on April 27, 1998; however, the Act created an effective date for the new regulation as being the first day of the 7th month beginning after publication. That date is November 1, 1998. Nonstatutory provisions in Section 3 of the Act require the department to create a committee, consisting of 6 home inspectors and 3 public members, to advise the department in promulgating rules. This section also authorizes the department to promulgate rules as emergency rule before November 1, 1998. The advisory committee was formed and met 7 times to develop administrative rules which must be in effect on the effective date of the new regulation.

Publication Date: November 1, 1998

Effective Date: November 1, 1998

Expiration Date: March 31, 1999

Hearing Date: December 17, 1998

Extension Through: May 29, 1999

EMERGENCY RULES NOW IN EFFECT

Revenue

A rule was adopted creating s. Tax 11.20, relating to the sales and use tax treatment of machinery and equipment used in waste reduction and recycling activities.

Exemption From Finding of Emergency

On February 25, 1999, the Joint Committee for Review of Administrative Rules, pursuant to s. 227.26, (2) (b), Stats., directed the Department of Revenue to use the emergency rule making

process to promulgate as an emergency rule, within 30 days, its policies interpreting s. 77.54 (26m), Stats.

Analysis by the Department of Revenue

Statutory authority: ss. 227.11 (2) (a) & 227.26 (2) (b)

Statute interpreted: s. 77.54 (26m)

Section Tax 11.20 is created to address the sales and use tax exemptions for waste reduction and recycling activities.

Publication Date: March 27, 1999

Effective Date: March 27, 1999

Expiration Date: August 24, 1999

EMERGENCY RULES NOW IN EFFECT

Workforce Development

(Economic Support, Chs. DWD 11–59)

Rules adopted renumbering ss. HFS 55.55 to 55.62 and revising ch. DWD 55, relating to background checks for persons involved with certified day care.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

Beginning on October 1, 1998, recently enacted provision in ch. 48, Stats., require the completion of background reviews on caregivers and others who come into contact with clients in the programs operated by caregivers. Although most of these provisions are administered by the Department of Health and Family Services, they also include day care programs certified by the Department of Workforce Development. DWD is adopting this emergency rule so that county and tribal social services agencies and human services agencies will be able to implement the new background review requirements in relation to certified day care programs as they become effective.

Publication Date: October 1, 1998

Effective Date: October 1, 1998

Expiration Date: February 28, 1999

Extension Through: June 27, 1999

- Rules adopted renumbering ch. HFS 55 and revising DWD 55, relating to criminal background checks in daycare.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

This represents the most recent amended version of this emergency rule which was first adopted on October 1, 1998. Beginning on October 1, 1998, recently enacted provisions in ch. 48, Stats., require the completion of background reviews on caregivers

and others who come into contact with clients in the programs operated by caregivers. Although most of those provisions are administered by the Department of Health and Family Services, they also include day care programs certified by the Department of Workforce Development. DWD is adopting this emergency rule so that county and tribal social services agencies and human services agencies will be able to implement the new background review requirements in relation to certified day care programs as they become effective.

Publication Date: March 26, 1999

Effective Date: March 26, 1999

Expiration Date: August 23, 1999

EMERGENCY RULES NOW IN EFFECT

Workforce Development

(Prevailing Wage Rates, Chs. DWD 290–294)

Rules adopted amending s. DWD 290.155, relating to the annual adjustment of the minimum estimated project costs for the application of the requirement to obtain a determination of prevailing wage rates for workers employed on state or local public works projects.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

The Department of Workforce Development, acting under its statutory authority to adjust threshold limits in accordance with changes in construction costs, has determined that the increase in construction costs between November 1997 and December 1998 requires that the threshold limits for prevailing wage rate determinations be raised from \$32,000 to \$33,000 for single-trade projects and from \$160,000 to \$164,000 for multi-trade projects.

If these new threshold limits are not put into effect by an emergency rule, the old limits will remain in effect for approximately six months, until the conclusion of the regular rulemaking process. The practical effect of this would be that, between now and 7/1/99, a single-trade project costing more than \$32,000 but less than \$33,000, or a multi-trade project costing more than \$160,000 but less than \$164,000, would not be exempt from the requirement to get a prevailing wage rate determination. A local unit of government or state agency proceeding with a public works project in this cost range during this period would incur the added complication of complying with the state prevailing wage laws, despite the fact that the threshold limit adjustment is based on national construction cost statistics and is very unlikely to be changed by the regular rulemaking process. The Department is proceeding with this emergency rule to avoid imposing this additional administrative burden on local governments and state agencies.

Publication Date: January 4, 1999

Effective Date: January 4, 1999

Expiration Date: June 3, 1999

Hearing Date: February 11, 1999

STATEMENTS OF SCOPE OF PROPOSED RULES

Barbering and Cosmetology Examining Board

Subject:

BC Code – Relating to crediting salon visits as theory hours.

Description of policy issues:

Objective of the rule:

Clarify a practice of allowing barbering and cosmetology schools to grant up to 8 hours of credit for structured “salon visits.”

Policy analysis:

Include a specific reference to structured salon visits in the syllabus chart in ch. BC 5, courses of instruction.

Statutory authority:

SS. 15.08 (5) (b) and 227.11 (2), Stats.

Estimate of the amount of state employee time and any other resources that will be necessary to develop the rule:

40 hours.

Natural Resources

(Environmental Protection—General, Chs. NR 100—)

(Environmental Protection—Water Supply, Chs. NR 800—)

Subject:

Chs. NR 114 and 809 – Relating to public water system capacity development, public notification requirements and operator certification.

Description of policy issues:

Description of policy issues to be resolved, including groups likely to be impacted or interested in this issue:

Certification of Water System Operators —

Although no major changes to the current operator certification programs are anticipated, the proposed amendments to ch. NR 114, Wis. Adm. Code, would add a new group of water systems that will need certified operators. Currently, over 600 municipal public water systems are required by rule to have certified persons operating them. Adoption of the 1996 SDWA Amendments would add approximately 1,800 more public water systems such as mobile home parks, apartments, condominiums, schools, factories and day cares. The vast majority of these will be small systems that will not require the same level of training that a municipal waterworks operator currently has. Therefore, the Department is proposing to create an additional certification solely for these new water system operators. The new certification will ensure that the operators of these systems have the knowledge needed to supply safe drinking water to the public. It is worthwhile to note that only minor amendments to the waterworks operator certification program and no changes to the wastewater and septage servicing operator certification programs are being proposed at this time. The proposed amendments to the waterworks operator certification requirements will not be changes from current policy and are needed to avoid a 20% forfeiture of Wisconsin's State Revolving Loan Fund (SRLF) capitalization grant.

Public Notification —

The existing public notification section in ch. NR 809, Wis. Adm. Code, will need to be revised to incorporate new federal regulations regarding general requirements and form, manner, content, and frequency of notice requirements. The 1996 SDWA Amendments set new, more prescriptive notice requirements for violations with “Potential to Have Serious Adverse Health Risks to Human Health”. At the same time, they allow more discretion to set less prescriptive notice requirements for all other violations, including requiring the notice in an annual report. The proposed amendments to public notification requirements will not be changes from current policy and are needed to comply with the federal regulations.

Capacity Development for Existing Systems —

Nationally, EPA has determined that many of the violations of the Safe Drinking Water Act occur because water systems lack the capacity to adequately develop, finance, and operate a public water system. Therefore, as part of 1996 SDWA Amendments, states were required to implement a capacity development program or forfeit a portion of the State Revolving Loan Fund (SRLF) capitalization grant. The capacity development program must contain two components:

1) A first component that reviews the system capacity for new non-transient non-community and community water systems. The Board adopted Wisconsin's capacity development rules for the new water systems at its January 1999 meeting. These rules were developed first because the federal deadline for implementing this component was prior to the second one's deadline.

2) The rule modifications that the DNR is now proposing would allow the state to implement the second component, a program to review the system capacity of all existing public water systems. It would impact water systems for schools, mobile home parks, municipal water systems, subdivisions, and businesses with 25 or more employees on-site. Should Wisconsin not develop and implement a complete capacity development program with both components, it would forfeit 20% of the SRLF capitalization grant.

This action does not represent a change from past policy.

Explain the facts that necessitate the proposed change:

Wisconsin has required that municipal waterworks have certified operators for many years, but the new federal regulations will expand that requirement to more (non-municipal) public water systems.

This action does not represent an opportunity for pollution prevention and/or waste minimization. It is adoption of federal requirements that do not include or allow for pollution prevention.

Statutory authority:

SS. 280.11, 281.11, 281.12 (1) and 281.17 (3), (8) and (9); and 42 U.S.C. s. 300g-8, -3 (c) (2) and -9 (a) and (b); s. 1419 SDWA, s. 1414 (c) (2) SDWA, s. 1420 (b) and (c) SDWA.

Staff time required:

The anticipated time commitment is 209 hours. Four public hearings are proposed to be held in April 2000 at Eau Claire, Appleton, Waukesha and Madison.

Regulation and Licensing (Real Estate Board)

Subject:

RL Code – Relating to licensing and practice of real estate brokers and salespersons.

Description of policy issues:*Objective of the rule:*

To amend or repeal rules in response to recommendations of the Council on Real Estate Curriculum and Examinations and the Real Estate Board. Changes would:

- Amend provisions relating to education and examination requirements that pertain to persons licensed in another state and applying for licensure in Wisconsin.
- Amend supervision requirements that apply to brokers who employ salespersons.
- Amend provisions relating to the conduct and ethical practices of licensees.

Policy analysis:

Provisions are in need of clarification or amendment to bring into tune with changes in the industry and the technical resources used by licensees. A significant change will be to remove the current requirement that the broker supervising a principal office or a branch office with licensed employees assigned to it to be physically present in the office on a full-time basis. The term full-time needs to be defined. In view of the current use of technology much supervision can be accomplished by the use of computers, fax machines and other communication devices. Changes to out-of-state applicants would make it easier for them to satisfy requirements, but still demonstrate adequate knowledge of state statutes and administrative rules.

Statutory authority:

SS. 227.11 (2), 452.03, 452.04, 452.05, 452.06, 452.07, 452.09, 452.11, 452.12 and 452.14, Stats.

Estimate of the amount of state employee time and any other resources that will be necessary to develop the rule:

100 hours.

Workforce Development**Subject:**

SS. DWD 301.01 to 301.07 – Relating to migrant labor.

Description of policy issues:*Objective of the rule:*

Replace obsolete ILHR building code references with current Comm building code references.

Existing policies and new policies included in the proposed rule and an analysis of policy alternatives:

There is no policy change.

Statutory authority:

Section 103.005 (1), Stats.

Estimate of the amount of time employees will spend developing the proposed rule and of other resources needed to develop the rule:

4 hours.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

Notice of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse

Please check the Bulletin of Proceedings for further information on a particular rule.

Agriculture, Trade & Consumer Protection

Rule Submittal Date

On May 3, 1999, the Wisconsin Department of Agriculture, Trade and Consumer Protection referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. ATPC 60, Wis. Adm. Code, relating to drug residues in raw milk.

Agency Procedure for Promulgation

The Department will hold public hearings on this rule after the Wisconsin Legislative Council Rules Clearinghouse completes its review. The Division of Food Safety is primarily responsible for the promulgation of this rule.

Contact Information

If you have questions regarding this rule, you may contact:

Tom Leitzke
Division of Food Safety
Telephone (608) 224-4711

or

Attorney Karl Marquardt
Telephone (608) 224-5031

Agriculture, Trade & Consumer Protection

Rule Submittal Date

On May 3, 1999, the Wisconsin Department of Agriculture, Trade and Consumer Protection referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. ATPC 77, Wis. Adm. Code, relating to certification of laboratories engaged in public health testing of milk, water and food.

Agency Procedure for Promulgation

The Department will hold public hearings on this rule after the Wisconsin Legislative Council Rules Clearinghouse completes its review. The Division of Food Safety is primarily responsible for the promulgation of this rule.

Contact Information

If you have questions regarding this rule, you may contact:

Tom Leitzke
Division of Food Safety
Telephone (608) 224-4711

or

Attorney Karl Marquardt
Telephone (608) 224-5031

Public Instruction

Rule Submittal Date

On April 13, 1999, the Wisconsin Department of Public Instruction submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends ch. PI 19, relating to the school age parent program.

Agency Procedure for Promulgation

The proposed amendments in this rule are technical changes made to conform the rule to statutory language. Therefore, pursuant to s. 227.16 (2) (b), Stats., the Department will not hold public hearings regarding these rules. The Division for Learning Support: Equity and Advocacy is primarily responsible for promulgation of this rule.

Contact Information

If you have questions regarding this rule, you may contact:

Nic Dibble, Consultant
School Social Work Services
Telephone (608) 266-0963

Revenue

Rule Submittal Date

Notice is hereby given, pursuant to s. 227.14 (4m), Stats., that on April 22, 1999, the Wisconsin Department of Revenue submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule amends s. Tax 11.51, Wis. Adm. Code, relating to taxable and exempt sales by grocers.

Agency Procedure for Promulgation

The Department intends to promulgate the proposed rule order without a public hearing, pursuant to s. 227.16 (2) (e), Stats. The Office of the Secretary is primarily responsible for the promulgation of the rule order.

Contact Information

If you have questions regarding this rule, you may contact:

Mark Wipperfurth
Income, Sales and Excise Tax Division
Telephone (608) 266-8253

NOTICE SECTION

Notice of Hearing

Agriculture, Trade and Consumer Protection
► (Reprinted from April 30, 1999 *Wis. Adm. Register*)

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on its emergency rule related to dairy plant security. The emergency rule, which is effective on May 1, 1999, amends ch. ATCP 100, Wis. Adm. Code.

Written Comments

The public is invited to attend the hearing and comment on the emergency rule. Following the public hearing, the hearing record will remain open until **June 10, 1999**.

Copies of Emergency Rule and Contact Information

A copy of the emergency rule may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Protection, 2811 Agriculture Drive, P. O. Box 8911, Madison, WI 53708, or by calling (608) 224-4934.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter by contacting Judy Jung (608) 224-4972 or by contacting the TDD at the Department at (608) 224-5058.

Hearing Information

The hearing is scheduled as follows:

<u>Date and Time</u>	<u>Location</u>	
May 18, 1999 Tuesday Commencing at 10:00 a.m.	Board Room, #SR-106 State Agriculture Bldg. 2811 Agriculture Dr. MADISON, WI	Handicapped accessible

Analysis Prepared by the Dept. of Agriculture, Trade & Consumer Protection

Statutory authority: ss. 93.07 (1), 97.20 (4), and 100.06

Statutes interpreted: ss. 97.20 and 100.06

This emergency rule reduces the amount of security which dairy plant operators file with the Department to secure payment of milk producer payrolls. This adjustment reflects a large decline in producer payrolls resulting from the recent drop in milk prices. This emergency rule will restore security requirements to normal levels, and will relieve dairy plant operators of excessive security requirements based on *last year's* high milk prices.

This adjustment will save dairy processors millions of dollars which they can put to other productive uses. It will maintain normal protection for milk producers based on this year's milk prices, and will help Wisconsin's dairy processing industry to remain financially viable.

Dairy Plant Security Program

The Department of Agriculture, Trade and Consumer Protection ("department") currently administers a dairy plant licensing and security program under ss. 97.20 and 100.06, Stats. The Department adopts rules under ch. ATCP 100, Wis. Adm. Code (Dairy Plant Payments to Milk Producers; Security).

Dairy plant operators are currently licensed under s. 97.20, Stats., with an annual license year beginning May 1. As a condition to licensing, dairy plant operators must comply with financial requirements under s. 100.06, Stats. These financial requirements are designed to provide "reasonable assurance" that dairy farmers will be paid for the milk which they produce and ship to dairy plants.

Currently, under ss. 97.20 (2) (d) 2. and 100.06, Stats., no dairy plant operator may purchase milk from producers in this state unless the dairy plant operator does one of the following:

- Files audited financial statements with the department showing that the operator meets minimum financial standards.
- Files security with the Department.
- Enters into a dairy plant trusteeship. (A trusteeship is not a viable option for many plants.)

Current Security Requirements

Under s. ATCP 100.45 (5), Wis. Adm. Code, if a dairy plant operator is required to file security, the security must be equal to at least 75% of the operator's "maximum liability to producers." An operator's "maximum liability to producers" is based on the operator's highest monthly producer payroll during the preceding license year.

Because of record high prices during the last quarter of 1998, dairy plants had unusually high producer payroll during that period. The Basic Formula Price ("BFP") reached an all time record high of \$17.34 per hundredweight in December 1998. Since then, the average market price for raw milk has fallen by approximately 41 percent. (Dairy economists expect an average BFP for 1999 to be 12 to 16.2% below last year's average of \$14.20.)

As a result of this dramatic price drop, dairy plant producer payrolls have decreased sharply. Current dairy plant security requirements, calculated according to last year's "maximum liability to producers," are therefore excessive in relation to current payrolls. (Security amounts are 31 to 48% higher than they would be if calculated at current prices.)

Prices received by Wisconsin dairy plants for processed dairy products have also fallen dramatically since the end of last year. This has created serious financial hardships for many dairy plant operators, and has impaired the ability of some operators to meet the financial standards under s. 100.06, Stats., or file security in the (excessive) amount currently required. If a dairy plant operator is unable to meet minimum financial standards, and is unable to file security, the dairy plant may be forced to close. The forced closing of a plant may, in turn, result in serious financial losses to producer patrons.

Security Adjustment

Excessive security requirements, based on last year's milk prices, impose an added burden on financially stressed plant operators. This emergency rule reduces security requirements by 15% for the license year beginning May 1, 1999, to reflect the reduction in milk prices and producer payrolls. This will make it easier for dairy plant operators to meet the minimum security requirements and stay in business.

Producer Protection

The emergency rule will continue to provide reasonable protection for milk producers. The emergency rule merely adjusts security levels to be commensurate with current milk prices and producer payrolls. This emergency rule will relieve financially stressed dairy plants from unnecessary financial burdens, and will make it easier for those plants to file security with the Department. That will reduce the risk of dairy plant financial failures, or forced closings of unsecured plants, which may adversely affect milk producers.

Under current rules, if the amount of security filed by a dairy plant operator falls below 75% of the operator's current monthly producer payroll, the dairy plant must immediately notify the Department. The Department may require the operator to file additional security. This emergency rule does not change these current rule provisions.

Fiscal Estimate

Under current rules, dairy plant operators who are required to file security with the Department must maintain minimum security amounts equal to 75% of their maximum liability to producers. Because of recent extraordinary decreases in the price of raw milk, this rule is placing unnecessary financial hardships on dairy plants that are not providing any increased benefit to producers.

This rule would temporarily reduce the amount of security to 85% of current levels, thereby reducing financial strain on dairy plant operators. Expenses incurred by the Department's dairy plant security program are funded by program revenue fees collected from dairy plants. This proposed emergency rule in no way affects revenues or expenses.

Initial Regulatory Flexibility Analysis

This emergency rule reduces the amount of security which dairy plant operators file with the Department to secure payment of milk producer payrolls. This adjustment reflects a large decline in producer payrolls resulting from the recent drop in milk prices. This emergency rule will restore security requirements to normal levels, and will relieve dairy plant operators of excessive security requirements based on *last year's* high milk prices.

This adjustment will save dairy processors, many of whom are "small businesses" as defined by s. 227.114 (1) (a), Stats., millions of dollars which they can put to other productive uses. It will maintain normal protection for milk producers, many of whom are "small businesses" as defined by s. 227.114 (1) (a), Stats., based on this year's milk prices.

It will also help Wisconsin's dairy processing industry to remain financially viable, which benefits processors and milk producers, many of whom are "small businesses" as defined by s. 227.114 (1) (a), Stats.

Notice of Hearings

Agriculture, Trade & Consumer Protection **[CR 99-72]**

► (Reprinted from April 30, 1999 *Wis. Adm. Register*)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed revisions to ch. ATCP 160, Wis. Adm. Code, relating to County and District Fairs. The hearings will be held at the times and places shown below. The public is invited to attend the hearings and make comments on the proposed rule. Following the public hearings, the hearing record will remain open until **May 28, 1999**, for additional written comments.

A copy of this rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Marketing, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, or by calling (608) 224-5100 or (608) 224-5131. Copies will also be available at the public hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by **May 3, 1999**, either by writing to Cindy Rein, 2800 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608) 224-5100 or by contacting the message relay system (TTY) at (608) 224-5058. Handicap access is available at both locations for the hearings.

Hearing Information

Two hearings are scheduled:

May 13, 1999 Thursday 9:30 a.m. until 11:30 a.m.	State of Wisconsin WI Dept. of Agriculture, Trade & Consumer Protection Bldg. 2811 Agriculture Drive Madison, WI 53718 Room 172
May 13, 1999 Thursday 3:00 p.m. until 5:00 p.m.	Marathon County Courthouse 500 Forest Street Wausau, WI 54403 Room 149

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

Statutory Authority: ss. 93.07(1) and 93.23(1)(a).2.

Statute Interpreted: s. 93.23

This rule updates the department's current rules related to county and district fairs. Among other things, this rule establishes new and revised entry classes for county and district fair exhibits, and specifies uniform premium awards for various entry classes.

Background

Under s. 93.23, Stats., the department of agriculture, trade and consumer protection ("department") is authorized to distribute state aid moneys to county and district fairs. Currently, about 76 county and district fairs receive state aids from the department. State aid moneys, appropriated under s. 20.115(4)(b) and (g), Stats., are used to reimburse county and district fairs for premiums awarded to fair exhibitors. In each year of the 1997-99 biennium, the Legislature earmarked \$585,000 of the state's gaming revenues for that purpose.

Under s. 93.23, Stats., the department may reimburse a county or district fair for 95% of the first \$8,000 in net premiums awarded by the fair, and 75% of all net premiums over \$8,000. The maximum amount of reimbursement is \$15,000. In order to qualify for state aids under s. 93.23, Stats., a county or district fair must award premiums according to a uniform premium list which the department adopts by rule.

The department's current rules under ch. ATCP 160, Wis. Adm. Code specify detailed entry classes for county and district fair exhibits. For each entry class, current rules specify uniform premiums for first place to fourth place premium awards. The department will pay state aids only on that portion of a premium award that is within the maximum amount specified by department rule. Under this rule, premiums for most exhibits range from \$1.00 to \$3.00, although higher amounts may be awarded for some classes of exhibits.

The department updates its county and district fair rules every 5 years, based on recommendations from the Wisconsin association of fairs. The Wisconsin association of fairs is a state association of organizations that sponsor county and district fairs in this state. This rule is adopted as part of the department's regular 5-year update cycle, and incorporates the most recent recommendations of the Wisconsin association of fairs.

Rule Contents

This rule specifies a number of new and revised entry classes for county and district fair exhibits. It also specifies a number of new and revised premium awards in various entry classes. This rule makes the following changes to current rules, among others:

- It adds a specific department or entry class for computers and computer programs.
- It changes the basis for entry classes in the junior fair division from the age of exhibitors to the academic grade level of exhibitors. Current rules specify that junior fair division exhibitors may be 8 to 19 years of age. This rule establishes entry classes for exhibitors who have completed kindergarten to grade 13 by June 30 in the year in which the fair is held.
- It eliminates specific breeds as entry classes in the dairy goats, poultry and rabbits departments for both the open division and junior fair division. The new rules allow the local fair to establish entry classes comprised of a single breed, or a combined breed class consisting of two or more breeds within the same group, none of which are offered by the fair as a separate entry class.
- It adds a poultry market entry class in the open class division.
- It simplifies the rule by eliminating specific entry classes for departments 18 to 32 in the open fair division. The affected departments include exhibits such as flowers and house plants, clothing, home furnishings, and foods and nutrition. The new rules simply list the premium levels and authorize the local fair board to establish specific classes and groupings under each premium level.
- It eliminates all bull calf entry classes from the dairy cattle department in the junior fair division. This change is made for safety reasons because of the potential for injury to youth exhibitors when showing a bull calf.

- It amends the showmanship class in each department in which it occurs in the junior fair division by eliminating exhibitor classes for beginners, intermediates, and seniors. The revision also gives the local fair board discretion to establish specific entry classes and subdivisions of entry classes.
- It creates an entry class for dairy sheep in the junior fair division's sheep department.
- It repeals and recreates rules for departments 14 to 34 in the junior fair division. The affected departments include exhibits such as flowers and house plants, clothing, home furnishings, and foods and nutrition. The new rules simply list the premium levels and authorize the local fair board to establish specific classes and groupings under each premium level.

This rule also makes a substantial number of technical and drafting changes to current rules.

Fiscal Estimate

This rule will have not significant fiscal impact on the department or local units of government nor will it have any significant impact on small business.

Initial Regulatory Flexibility Analysis

The proposed rule, ch. ATCP 160, Wis. Adm. Code, County and District Fairs, has been reviewed pursuant to s. 227.114, Wis. Stats., and it has been determined that the rule will not have a significant economic impact on a substantial number of small businesses.

Notice of Proposed Rule

Revenue

[CR 99-35]

Notice is hereby given that pursuant to ss. 73.029 and 227.11(2)(a), Stats., and interpreting ss. 71.01(8r), 71.42(3m), 71.63(1m) and (5m), 71.65(3)(a), 73.029, 77.58(1m), 77.61(14), 77.96(5m), 78.12(5), 78.55(5m), 139.01(5m), 139.30(8m) and 139.75(5m), Stats., and according to the procedure set forth in s. 227.16(2)(e), Stats., the Department of Revenue will adopt the following rules as proposed in this notice without public hearing unless, within 30 days after publication of this notice on **May 15, 1999**, it is petitioned for a public hearing by 25 natural persons who will be affected by the rule, a municipality which will be affected by the rule, or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Contact Person

Please contact Mark Wipperfurth at (608) 266-8253, if you have any questions regarding this proposed rule order.

Analysis by the Department of Revenue

Statutory authority: ss. 73.029 and 227.11(2)(a)

Statutes interpreted: ss. 71.01(8r), 71.42(3m), 71.63(1m) and (5m), 71.65(3)(a), 73.029, 77.58(1m), 77.61(14), 77.96(5m), 78.12(5), 78.55(5m), 139.01(5m), 139.30(8m) and 139.75(5m)

SECTION 1. Tax 1.12 is created to permit the Department of Revenue to require electronic funds transfer, or "EFT," to pay or deposit certain taxes and fees, including but not limited to corporate income and franchise tax; income tax withholding; general, county and special district, or "stadium," sales and use tax; fermented malt beverages tax; liquor, or "distilled spirits and wine," tax and administrative fee; cigarette tax; tobacco products tax; alternate fuels tax; general aviation fuel tax; motor vehicle fuel tax and petroleum inspection fee; and individual and fiduciary income tax, when the amounts due in the prior year equaled or exceeded a specified amount. The rule is being promulgated because it is the only method by which the department may require EFT as a payment method, as a result of the creation of s. 73.029, Stats., by 1997 Wis. Act 27.

In addition to providing for EFT payment requirements, the rule also provides information for taxpayers who elect to use EFT.

Text of Rule

SECTION 1. Tax 1.12 is created to read:

Tax 1.12 Electronic funds transfer. (1) SCOPE. This section applies to any person who is required to or elects to pay or deposit taxes or fees by electronic funds transfer, or "EFT."

(2) PURPOSE. The purpose of this section is to specify which taxes and fees are required to be paid or deposited using the EFT payment method, to provide that certain persons not required to use the EFT payment method may elect to do so and to explain the procedures for using EFT.

(3) DEFINITIONS. In this section:

(a) "ACH" means automated clearing house, a central clearing facility operated by a federal reserve bank or a private sector organization on behalf of depository financial institutions in which depository financial institutions transmit or receive ACH entries.

(b) "ACH credit" means the EFT payment option in which the payer initiates the transfer of funds by authorizing the payer's financial institution to transfer the payment amount to the department's depository bank.

- (c) “ACH debit” means the EFT payment option in which the payer initiates the transfer of funds by authorizing the department’s depository bank to transfer the payment amount from the payer’s account.
- (d) “Electronic funds transfer” or “EFT” means any transfer of funds initiated through a terminal, telephone, computer or magnetic tape authorizing a financial institution to debit or credit an account for next day settlement.

Note: The EFT payment method allows funds to be transferred electronically from the payer’s financial institution to the department’s depository bank eliminating the need to prepare and process a paper check.

- (e) “Entry” means an electronic item representing the transfer of funds in the ACH system.
- (f) “Financial institution” means any bank, savings and loan, credit union, industrial bank or other institution organized under either national or state banking laws capable of both accepting deposits and making loans.

(g) “Payer” means any person who is required to or elects to pay or deposit taxes or fees by electronic funds transfer.

(h) “Settle” or “settlement” means to transfer funds, or a transfer of funds, between two parties in cash or negotiable items or on the books of a mutual depository to complete one or more prior transactions and made subject to a final accounting.

(i) “Settlement date” means the date on which an exchange of funds with respect to an entry or entries is reflected on the books of the department’s depository bank.

(j) “Trace number” means a character code uniquely identifying each ACH entry.

(4) **REQUIREMENT OR ELECTION TO USE EFT.** (a) Except as provided in sub. (11), the department requires a person who owes taxes and fees as described in subds. 1. to 11. to pay or deposit the taxes and fees using the EFT payment method. The following taxes and fees are included in the EFT payment requirement:

1. Corporate income and franchise tax estimated tax payments and tax due with the tax return when the net tax less refundable credits on the prior year’s tax return was \$40,000 or more.
2. Income tax withholding payments when the required deposits were \$10,000 or more in the prior calendar year.
3. General, county and stadium sales and use tax when the aggregate amount due in the prior calendar year was \$10,000 or more.

Note: See s. Tax 11.001(4) for the definition of stadium tax.

4. Fermented malt beverages tax when the tax due after the adjustment for any overpayment or additional amount due for a previous period was \$40,000 or more in the prior calendar year.

5. Liquor or “distilled spirits and wine” tax and administrative fee when the aggregate net amount of tax and fee due in the prior calendar year was \$40,000 or more.

6. Cigarette tax when the net tax due before printing and shipping costs was \$40,000 or more in the prior calendar year.

7. Tobacco products tax when the tax due in the prior calendar year was \$40,000 or more.

8. Alternate fuels tax when the total tax due in the prior calendar year was \$40,000 or more.

9. General aviation fuel tax when the tax due in the prior calendar year was \$40,000 or more.

10. Motor vehicle fuel tax and petroleum inspection fee when the aggregate amount due in the prior calendar year was \$40,000 or more.

11. Individual and fiduciary income tax estimated tax payments when the estimated tax payments as required under s. 71.09, Stats., were \$40,000 or more in the prior taxable year.

(b) Any person not required to use the EFT payment method under par. (a) may elect to use the EFT payment method to pay or deposit the taxes or fees specified in par. (a).

(5) **DATE FIRST EFT PAYMENT REQUIRED.** The department shall notify a person when EFT payments or deposits are required. A 90-day EFT registration period shall follow the notification. The first required EFT payment or deposit shall be due on the first payment or deposit due date following the end of the registration period.

Example: An employer required to make semi-monthly deposits of withholding tax is notified of the EFT requirement on November 10, 1999. The first EFT deposit is due February 15, 2000, which is the first deposit due date following the end of the 90-day registration period.

(6) **REGISTRATION FOR EFT.** (a) Payers shall register with the department to use the EFT payment method before making EFT payments or deposits. Payers required to pay or deposit by EFT shall be notified by the department as provided in sub. (5) and given registration instructions. Persons who elect to pay or deposit by EFT may request an EFT registration packet from the department.

Note: A request for an EFT registration packet may be made by calling the department’s forms request line at (608)266-1961, or by writing to Forms Request Office, Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708-8903.

(b) As part of the registration process, the payer shall provide a signed authorization statement to the department authorizing the department to make ACH debit transfers through its depository bank or to receive ACH credit transfers from the payer’s financial institution.

(7) **EFT PAYMENT PROCEDURES.** EFT payments or deposits shall be credited by the department directly to the payer’s tax account. The payer may use the ACH debit or ACH credit transfer option, or both, as follows:

(a) *ACH debit transfers.* 1. ACH debit transfers shall be made using a touch tone telephone, a computer with a modem or another department approved method. A toll free telephone number and voice instructions shall be provided by the department for the payer to use when initiating an ACH debit transfer via telephone. Required payment information includes the tax type code for the tax being paid, the tax period date to which the payment should be applied, the amount of the payment and the effective date of the payment.

Note: written requests for department approval of another ACH debit transfer method should be addressed to Electronic FundsTransfer, Wisconsin Department of Revenue, P.O. Box 8912, Madison WI 53708-8912.

2. The payer shall initiate ACH debit transfers before 4:00 p.m. central standard time or central daylight savings time, as applicable, at least one business day before the prescribed due date of the payment in order for the payment to have a settlement date on or before the prescribed due date.

(b) *ACH credit transfers*. 1. A payer shall initiate ACH credit transfers through the payer's financial institution following directions specific to that financial institution.

2. In order for the payment to have a settlement date on or before the prescribed due date, ACH credit transfers shall be initiated in time for the payer's financial institution to settle the funds transfer on or before the due date of the payment.

(c) **COSTS TO INITIATE EFT**. (a) ACH debit transfers shall occur at no cost to the payer.

(b) Payers using ACH credit transfers are liable for any fees charged by the payer's financial institution.

(9) **EVIDENCE OF EFT PAYMENT**. A payer receives a trace number for each EFT transaction. The trace number given to the payer during the EFT transaction and included as part of the ACH entry is the payer's confirmation of payment or deposit and shall provide proof of the date and amount of the payment or deposit.

(10) **DUE DATE OF EFT PAYMENT**. (a) In order for EFT payments and deposits to be considered received on or before the prescribed due date, EFT payments or deposits shall have a settlement date on or before the prescribed due date, or the revised due date as provided in par. (c), of the payment or deposit.

(b) Payments or deposits made by EFT with a settlement date later than the prescribed due date or revised due date of the payment or deposit shall be considered late and shall be subject to all applicable late fees, penalties and interest.

(c) When the prescribed due date falls on a weekend or legal holiday, the payment due date is revised to be the first business day immediately following the weekend or holiday.

Example: If the prescribed due date falls on a Monday which is also memorial day, an ACH debit transfer must be initiated on or before the preceding Friday so that it has a settlement date on or before the following Tuesday, when the payment is due. A payer using an ACH credit transfer must work with the financial institution to initiate the transfer in time to settle on or before the revised payment due date.

(11) **EXCEPTION TO EFT REQUIREMENT**. (a) The secretary of revenue may waive the requirement to use the EFT payment method when the secretary determines that the requirement causes an undue hardship, if the person otherwise required to use EFT does all of the following:

1. Requests the waiver in writing.

Note: Written waiver requests should be addressed to Electronic Funds Transfer, Wisconsin Department of Revenue, P.O. Box 8912, Madison, WI 53708-8912.

2. Clearly indicates why the requirement causes an undue hardship.

3. Is current in all return and report filings and tax payments.

(b) In determining whether the EFT requirement causes an undue hardship, the secretary of revenue may consider the following factors:

1. Unusual circumstances which may prevent the payer from using the EFT method.

Examples: Examples of unusual circumstances include:

1) The person does not have access to a touch tone telephone.

2) The person is physically unable to use a touch tone telephone.

3) The telephone system available to the person is incompatible with the department's telephone system used for EFT registration or payments, or both.

2. Any other factor which the secretary determines is pertinent.

Note: Section Tax 1.12 interprets ss. 71.01(8r), 71.42(3m), 71.63(1m) and (5m), 71.65(3)(a), 73.029, 77.58(1m), 77.61(14), 77.96(5m), 78.12(5), 78.55(5m), 139.01(5m), 139.30(8m) and 139.75(5m), Stats.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Initial Regulatory Flexibility Analysis

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Fiscal Estimate

Tax 1.12 is created to permit the Department of Revenue (DOR) to require electronic funds transfer (EFT) to pay income, sales and excise taxes. In general, EFT could be required for persons or businesses with prior calendar year deposits of \$40,000 or more. For income tax withholding and sales tax, EFT could be required for those prior calendar year deposits of \$10,000 or more. EFT could be accomplished by debit transfers with costs paid by DOR or credit transfers with costs paid by the taxpayer. The department may waive the EFT requirement in specific cases.

In August 1998, approximately 30% of withholding collections came from voluntary use of EFT. It is not currently possible to use EFT for sales tax deposits. The rule would not have a significant effect on state tax collections. With increased EFT, state FPR investment income could increase by perhaps \$1 million annually because funds would be available sooner than without EFT. Some of this increase would be from voluntary use of EFT, and some from required use.

Notice of Proposed Rule

Revenue

[CR 99-54]

Notice is hereby given that pursuant to s. 227.11(2)(a), Stats., and interpreting ss. 77.51(4)(a)3., (14r) and (15)(a)3., 77.52(2)(a) and 77.54(9a), (20)(c) and (20m), Stats., and according to the procedure set forth in s. 227.16(2)(e), Stats., the Department of Revenue will adopt the following rules as proposed in this notice without public hearing unless, within 30 days after publication of this notice on **May 15, 1999**, it is

petitioned for a public hearing by 25 natural persons who will be affected by the rule, a municipality which is representative of a farm, labor, business or professional group which will be affected by the rule.

Contact Person

Please contact Mark Wipperfurth at (608) 266–8253, if you have any questions regarding this proposed rule order.

Analysis by the Department of Revenue

Statutory authority: s. 227.11(2)(a)

Statutes interpreted: ss. 77.51(4)(a)3., (14r) and (15)(a)3., 77.52(2)(a) and 77.54(9a), (20)(c) and (20m)

SECTION 1. Tax 11.05(2)(a) and the example following, sub. (2)(d) and sub. (3)(d) are revised, to provide additional information regarding the facilities to which admissions are taxable. A note is added at the end of Tax 11.05(2)(b), to reference Tax 11.51 for a list of taxable food products.

Tax 11.05(2)(d) is further revised, to update style per Legislative Council Rules Clearinghouse (Clearinghouse) standards.

Tax 11.05(2)(f) is revised, to reflect the renumbering of sub. (3)(p) as explained in section 2.

Tax 11.05(2)(i) is revised, to clarify that the paragraph applies to the rental of lodging facilities that are available to the public.

Tax 11.05(3)(L) is revised, to reflect the change to s. 77.54(20)(c)5., Stats., by 1997 Wis. Acts 27 and 41, regarding sales of food, food products and beverages by institutions of higher education. SECTIONS 2 AND 3. Tax 11.05(3)(m) to (u) are renumbered Tax 11.05(3)(n) to (v) and new Tax 11.05(3)(m) is created, to reflect the change to s. 77.54(20)(c)5., Stats., by 1997 Wis. Acts 27 and 41, regarding sales of food, food products and beverages by institutions of higher education.

Tax 11.05(3)(w) and (x) are created, to list additional items which are not taxable.

SECTION 4. Tax 11.05(4)(a) is revised, to reflect the exemption for purchases of joint local water authorities, as a result of the creation of s. 77.54(9a)(em), Stats., by 1997 Wis. Act 184.

Tax 11.05(4)(b)2. and the note following are revised, to reflect the creation of a new multipurpose exemption certificate, Form S–211, which replaces various other exemption certificates.

SECTION 5. Tax 11.05(4)(b)3. is created, to reflect that a Wisconsin governmental unit may provide its certificate of exempt status number to a retailer to document that its purchases are exempt.

SECTION 6. Tax 11.87(1)(b) is revised, to include a reference to s. 77.54(20m), Stats., as created by 1997 Wis. Act 237.

SECTION 7. Tax 11.87(1)(e) and (f) are renumbered Tax 11.87(1)(f) and (e), to alphabetize definitions per Clearinghouse standards.

A note is added at the end of Tax 11.87(1)(h), to reference Tax 11.51 for lists of taxable and exempt items.

SECTION 8. Tax 11.87(2)(c) and the example are revised and a note is added, to clarify the taxability of meals.

Tax 11.87(3)(a) is revised, to clarify the exemption for food and beverages sold by health care facilities.

SECTION 9. Tax 11.87(3)(c) is revised, to reflect the change to s. 77.54(20)(c)5., Stats., by 1997 Wis. Acts 27 and 41, regarding sales of food, food products and beverages by institutions of higher education.

SECTIONS 10 AND 11. Tax 11.94(1)(d) and (2)(a) are revised, to update style per Clearinghouse standards.

Tax 11.94(2)(c) is revised, to reflect two Circuit Court decisions, *Rhineland Paper Company, Inc. vs. Wisconsin Department of Revenue* (97CV 1051, December 18, 1997) and *Trierweiler Construction and Supply Co., Inc. vs. Wisconsin Department of Revenue* (97CV 1444, December 12, 1997). The Circuit Court held that sales price does not include transportation costs separately incurred by the buyer from a carrier independent of the retailer.

Consequently, Tax 11.94(2)(d) and the example following are repealed, because the answer may vary, depending on the facts. Taxability must be determined on a case-by-case basis.

Text of Rule

SECTION 1. Tax 11.05(2)(a), (d), (f) and (i) and (3)(d) and (L) are amended to read:

Tax 11.05(2)(a) Admissions to recreational facilities if the activity being conducted at the facility is amusement, athletic, entertainment or recreational in nature.

Note to Revisor: Replace the example at the end of sub. (2)(a) with the following:

Example: Green fees, campground fees, swimming fees, ice skating fees and park shelter house fees are taxable if the activity being conducted at the facility is amusement, athletic, entertainment or recreational in nature.

Note to Revisor: Add the following note at the end of Tax 11.05(2)(b):

Note: See s. Tax 11.51 for a list of food products subject to tax.

(d) Charges for access to or use of athletic facilities, such as baseball and softball diamonds, stadiums and gymnasiums, including entry fees and any charges for lights, heat, janitor fees and equipment, when used for activities which are amusement, athletic, entertainment or recreational in nature.

(f) Sales of maps, plat books, photocopies or other printed material, except as provided in sub. (3)(p)(d).

(i) Rental of lodging facilities, available to the public, to any person residing for a continuous period of less than one month, except that the tax does not apply to the receipts from accommodations furnished by any hospitals, sanatoriums, nursing homes, colleges or universities operated by governmental units.

(3)(d) Rental of buildings or space, such as offices, warehouses and meeting rooms, not used for activities which are amusement, athletic, entertainment or recreational in nature.

(L) Meals, food, food products or beverages, except soda water beverages, fermented malt beverages and intoxicating liquor, sold by hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities as defined in s. 50.01(1g), Stats., and day care centers under ch. 48, Stats., on their premises to patients, employees, residents or guests; ~~meals furnished in accordance with any contract or agreement by a public institution of higher education, including dormitory meals; and meals sold to the elderly or handicapped by "mobile meals on wheels."~~

SECTION 2. Tax 11.05(3)(m) to (u) are renumbered Tax 11.05(3)(n) to (v).

SECTION 3. Tax 11.05(3)(m), (w) and (x) are created to read:

Tax 11.05(3)(m) Meals, food, food products or beverages, except soda water beverages, fermented malt beverages and intoxicating liquor, furnished in accordance with any contract or agreement by a public or private institution of higher education, or paid for to a public or private institution of higher education through the use of an account of the institution and furnished by the institution, if either of the following conditions is met:

1. The meals, food, food products or beverages are furnished to an undergraduate student, a graduate student or a student enrolled in a professional school if the student is enrolled for credit at that institution, provided the items are consumed by that student.

2. The meals, food, food products or beverages are furnished to a national football league team.

(w) Parking tickets.

(x) Charges for lessons.

SECTION 4. Tax 11.05(4)(a) and (b)2. are amended to read:

Tax 11.05(4)(a) Section 77.54(9a), Stats., exempts sales to and the storage, use or other consumption of tangible personal property and services by Wisconsin or by any agency thereof of Wisconsin, or any Wisconsin county, city, village, town, school district, county-city hospital established under s. 66.47, Stats., sewerage commission organized under s. 281.43(4), Stats., metropolitan sewerage district organized under ss. 66.20 to 66.26 or 66.88 to 66.918, Stats., local exposition district under subch. II of ch. 229, Stats., joint local water authority created under s. 66.0735, Stats., university of Wisconsin hospitals and clinics authority or any other unit of government, or any agency or instrumentality of one or more units of government within Wisconsin. However, the exemption does not apply to governmental units of other states or hospital service insurance corporations under s. 613.80, Stats.

(b)2. ~~A# A Wisconsin sales and use tax exemption certificate, form S-207 or S-209~~
S-211.

Note to Revisor: Replace the note at the end of sub. (4)(b)2. with the following:

Note: Form S-211 is available from any department of revenue office.

SECTION 5. Tax 11.05(4)(b)3. is created to read:

Tax 11.05(4)(b)3. Its certificate of exempt status number that the retailer should record on the invoice or other document it keeps as part of its records.

Note to Revisor: In the second note at the end of Tax 11.05, remove the word "and" before part (i) and add the following at the end of the note:

; and (u) The exemption for certain meals, food, food products and beverages furnished by institutions of higher education was revised to apply only if the items are furnished to an undergraduate student, a graduate student or a student enrolled in a professional school if the student is enrolled for credit at that institution and if the items are consumed by that student, or the items are furnished to a national football league team, effective for contracts or agreements entered into on or after October 14, 1997, pursuant to 1997 Wis. Act 27, and further revised to include certain meals, food, food products or beverages paid for to an institution of higher education through the use of an account of the institution, if the items are furnished by the institution, effective December 31, 1997, pursuant to 1997 Wis. Act 41.

SECTION 6. Tax 11.87(1)(b) is amended to read:

Tax 11.87(1)(b) "Exempt food" means food, food products and beverages not subject to the sales and use tax as provided in s. 77.54(20) and (20m), Stats.

SECTION 7. Tax 11.87(1)(e) and (f) are renumbered Tax 11.87(1)(f) and (e).

Note to Revisor: Add the following note at the end of Tax 11.87(1)(h):

Note: See s. Tax 11.51 to determine which items are exempt food and which items are taxable food.

SECTION 8. Tax 11.87(2)(c) and (3)(a) are amended to read:

Tax 11.87(2)(c)(title) ~~Food components of meals~~ *Meals*. Food items which comprise or are components of a meal shall be taxable food when sold on a "take out" or "to go" basis and are packaged or wrapped and removed from the premises for consumption elsewhere for consumption either on or off the seller's premises.

Note to Revisor: 1) Replace the example at the end of sub. (2)(c) with the following:

Example: A basket of chicken with cole slaw and french fries sold "to go" is a taxable meal.

(2) Add the following note after the example at the end of sub. (2)(c):

Note: See s. Tax 11.51 for a definition of meal.

(3)(a) Meals, food, food products or beverages, except soda water beverages, fermented malt beverages and intoxicating liquor, sold on their premises by hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities as defined in s. 50.01(1g), Stats., or day care centers registered under ch. 48, Stats., and served on their premises. However, if an affiliated organization sells the items, the exemption does not apply.

Note to Revisor: Do not change the example at the end of sub. (3)(a).

SECTION 9. Tax 11.87(3)(c) is repealed and recreated to read:

Tax 11.87(3)(c) *Institutions of higher education.* Meals, food, food products or beverages, except soda water beverages, fermented malt beverages and intoxicating liquor, furnished in accordance with any contract or agreement by a public or private institution of higher education, or paid for to a public or private institution of higher education through the use of an account of the institution and furnished by the institution, if either of the following conditions is met:

1. The meals, food, food products or beverages are furnished to an undergraduate student, a graduate student or a student enrolled in a professional school if the student is enrolled for credit at that institution, provided the items are consumed by that student.

2. The meals, food, food products or beverages are furnished to a national football league team.

Note to Revisor: 1) Replace the first note at the end of Tax 11.87 with the following:

Note: Section Tax 11.87 interprets ss. 77.51(4)(c)2., (14)(b) and (f) and (15)(c)1. and 77.54(20) and (20m), Stats.

2) In the second note at the end of Tax 11.87, remove the word “on” in parts (a) and (c), remove the word “and” before part (c), and add the following at the end of the note:

; (d) The exemption for certain meals, food, food products and beverages furnished by institutions of higher education was revised to apply only if the items are furnished to an undergraduate student, a graduate student or a student enrolled in a professional school if the student is enrolled for credit at that institution and if the items are consumed by that student, or the items are furnished to a national football league team, effective for contracts or agreements entered into on or after October 14, 1997, pursuant to 1997 Wis. Act 27, and further revised to include certain meals, food, food products or beverages paid for to an institution of higher education through the use of an account of the institution, if the items are furnished by the institution, effective December 31, 1997, pursuant to 1997 Wis. Act 41; and (e) Sales of certain food combinations became exempt effective August 1, 1997, pursuant to 1997 Wis. Act 237.

SECTION 10. Tax 11.94(1)(d) and (2)(a) and (c) are amended to read:

Tax 11.94(1)(d) Gifts purchased in Wisconsin by residents or nonresidents and shipped out-of-state by the seller at the direction of the purchaser ~~shall not be~~ are not subject to the sales or use tax if the purchaser does not take physical possession of the gift at the time of the sale. However, if the purchaser takes possession of the gift at the time of the sale, the sale is taxable.

(2)(a) When a seller charges a purchaser for the delivery of taxable tangible personal property, the seller’s total charge, including any transportation charge, shall be subject to the sales or use tax. It is immaterial whether delivery is made by the seller’s vehicle, a common or contract carrier, or the United States postal service.

Note to Revisor: Do not change the example at the end of sub. (2)(a).

(c) A Wisconsin purchaser who purchases taxable goods without tax for use in Wisconsin is subject to the use tax or sales tax pursuant to s. Tax 11.14(2)(c) based on the “sales price” of the goods to the purchaser. The “sales price” shall include transportation charges paid by the Wisconsin purchaser to the seller for shipment of the goods to the purchaser. The “sales price” does not include transportation charges paid by the Wisconsin purchaser to a carrier independent of the seller when the purchaser arranges for the transportation.

SECTION 11. Tax 11.94(2)(d) is repealed.

Note to Revisor: Replace the first note at the end of Tax 11.94 with the following:

Note: Section Tax 11.94 interprets ss. 71.51(4)(a)3., (14)(intro.) and (d), (14r) and (15)(a) and 77.52(1), Stats.

Initial Regulatory Flexibility Analysis

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Fiscal Estimate

The proposed order reflects changes in the treatment for sales of meals by institutions of higher learning enacted in 1997 Wis. Acts 27 and 41, an exemption for local water authorities enacted in 1997 Wis. Act 184, and Circuit court decisions relating to treatment of transportation costs. Other changes clarify existing language to reflect the Department’s current position, and alter style and format to conform to Legislative Council Clearinghouse standards. These rule changes do not have a fiscal effect.

NOTICE OF SUBMISSION OF PROPOSED RULES TO THE PRESIDING OFFICER OF EACH HOUSE OF THE LEGISLATURE,
UNDER S. 227.19, STATS.

Please check the Bulletin of Proceedings for further information on a particular rule.

Agriculture, Trade and Consumer Protection (CR 98-159):

Ch. ATPC 139 – Relating to consumer product safety; to safety standards for children’s bicycle helmets; and to banning drawstrings in children’s clothing which pose serious safety hazards.

Chiropractic Examining Board (CR 98-192):

Chs. Chir 1 to 4 and 7 and ss. Chir 6.02 and 9.04 – Relating to: definitions, applications, examinations, temporary permits and renewal.

Wisconsin Emergency Management (CR 99-17):

S. WEM 1.04 (8) – Relating to inventory reporting for petroleum marketing facilities.

Financial Institutions--Banking (CR 99-58):

Ch. DFI-Bkg 4 – Relating to investments in time deposits and certificates of deposits.

Financial Institutions--Banking (CR 99-59):

Ch. DFI-Bkg 6 – Relating to aggregate investments in bonds and certain other securities.

Financial Institutions--Banking (CR 99-60):

Ch. DFI-Bkg 7 – Relating to real estate mortgage loans.

Funeral Directors Examining Board (CR 99-8):

S. FD 6.10 – Relating to the solicitation of prospective purchasers of burial agreements funded with the proceeds of a life insurance policy.

Health and Family Services (CR 99-4):

SS. HFS 119.07 and 119.15 – Relating to operation of the Health Insurance Risk-Sharing Plan (HIRSP).

Health and Family Services (CR 99-20):

Ch. HFS 114 – Relating to neonatal intensive care unit training grants.

Hearings and Appeals, Division of (CR 98-119):

Ch. HA 3 – Relating to the procedure and practice for fair hearings regarding the food stamp and Medicaid programs.

Public Service Commission (CR 99-53):

S. PSC 132.02 (3) – Relating to the ch. PSC 132 definition of “public utility” and to cable operators’ access to railroad rights-of-way.

Regulation and Licensing (CR 99-36):

S. RL 12.04 and ch. RL 25 – Relating to education, pre-license and continuing education programs and courses for real estate brokers and salespersons.

Transportation (CR 99-37):

Ch. Trans 212 – Relating to standards for the inspection of bridges in Wisconsin.

Transportation (CR 99-49):

SS. Trans 276.07 and 276.09 – Relating to allowing the operation of “double bottoms” (and certain other vehicles) on certain specified highways.

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

The following administrative rules have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication of these rules could be delayed. Contact the Revisor of Statutes Bureau at (608) 266-7275 for updated information on the effective dates for the listed rules.

Agriculture, Trade and Consumer Protection**(CR 98-97):**

An order affecting chs. ATCP 102 and 105, relating to motor vehicle fuel pricing.

Effective 06-01-99.

Agriculture, Trade and Consumer Protection**(CR 98-123):**

An order affecting chs. ATCP 10 and 11, relating to fish farms, fish diseases and imports of live fish and fish eggs.

Effective 06-01-99.

Agriculture, Trade and Consumer Protection**(CR 98-152):**

An order affecting chs. ATCP 10, 11 and 12, relating to:

- 1) Licensing fees charged to livestock markets, livestock dealers and livestock truckers;
- 2) Registration fees charged to the keepers of farm-raised deer;
- 3) Fees charged for a permit to operate an approved feedlot, and
- 4) The fee charged to an accredited veterinarian when the veterinarian obtains, from the Department of Agriculture, Trade and Consumer Protection, forms to be used in issuing interstate health certificates or certificates of veterinary inspection.

Effective 06-01-99.

Agriculture, Trade and Consumer Protection**(CR 98-182):**

An order amending ss. ATCP 81.50, 81.51 and 81.52, relating to grade standards for colby and monterey (jack) cheese.

Effective 06-01-99.

Health and Family Services (CR 98-127):

An order affecting ch. HSS 98, relating to lie detector testing of sex offenders who are in community placements.

Effective 06-01-99.

Natural Resources (CR 98-150):

An order affecting ss. NR 20.03 and 23.02, relating to Wisconsin-Michigan boundary waters.

Part effective 06-01-99.

Part effective 07-01-99.

Psychology Examining Board (CR 98-206):

An order affecting chs. Psy 1 to 5, relating to requirements for examination and licensure of psychologists, renewal and conduct.

Effective 07-01-99.

Veterans Affairs (CR 98-120):

An order creating s. VA 1.19, relating to the cancellation of indebtedness under the economic assistance, veterans trust fund stabilization, personal and secondary loan programs.

Effective 06-01-99.

Veterans Affairs (CR 98-200):

An order amending s. VA 1.10 (7), relating to the release of information to a collection agency under contract with the state to collect delinquent Department loans.

Effective 06-01-99.

Workforce Development (CR 99-6):

An order amending s. DWD 290.155, relating to the annual adjustment of the minimum estimated project costs for the application of the requirement to obtain a determination of prevailing wage rates for workers employed on state or local public works projects.

Effective 06-01-99.

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